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**GOVERNMENT RECORDS ACCESS
AND MANAGEMENT TASK FORCE**

Final Report—2005

Presented November 9, 2005 to the
Government Operations Interim Committee and the
Public Utilities and Technology Interim Committee

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Introduction

In 1991, the Legislature enacted the Government Record Access and Management Act (GRAMA) with the passage of H.B. 246. Since that time, the Act has been amended multiple times. In 2005 the Legislature passed H.B. 75 "Government Records Access and Management Task Force," which created a 14-member task force and assigned it to review and make recommendations on several issues. (See Appendix One for a complete list.) These issues have resulted from questions that have arisen from:

- fourteen years of implementation of GRAMA;
- some 57 bills that have passed related to GRAMA, approximately half of which have passed in the last four years; and
- information and technology advances that may not have been anticipated with the original GRAMA Legislation.

Every entity of the state and local government must understand and comply with GRAMA

The final report, including any proposed legislation must be presented to the Government Operations Interim Committee and the Public Utilities and Technology Interim Committee prior to the end of November 2005. The Task Force is repealed November 30, 2005. (See 2005 Agenda Index in Appendix Two for a list of agenda topics discussed).

What is GRAMA?

GRAMA the "Government Record Access and Management Act" is a Utah law found in Title 63, Chapter 2 of the Utah Code Annotated. The Act governs how information (records) held by government (except the federal government) are to be managed and how government is to allow or restrict access to those records. The Act attempts to strike an appropriate public policy balance between the public's right of access to

Balancing Retention and Access of Government Records



Figure 1

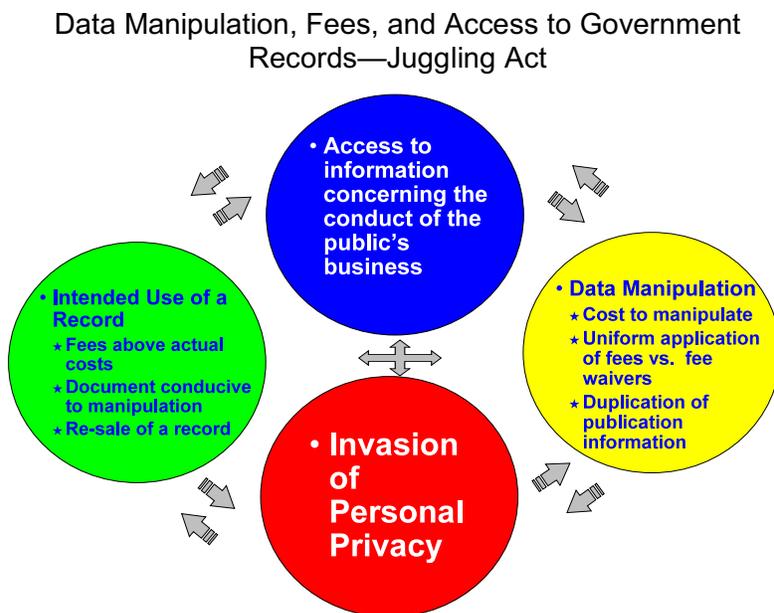
information concerning the conduct of the public's business and the right of privacy in relation to personal data gathered by governmental entities. Records are classified as public, protected, controlled, or private. Specific disclosure provisions in GRAMA govern who has access to the records in each classification. Other provisions govern records request procedures, format

issues, fees, and appeals for denial of a request for a government record. GRAMA also creates a seven-member State Records Committee to review and approve retention and disposal of records schedules, hear appeals, and order reassignment of classification of records, if needed. (See the slide presentation in Appendix Three.)

Current Issues

The following are some of the current issues related to GRAMA that the task force discussed:

- **Manipulation of electronic data** -- to what extent should the government format, compile, or summarize data to fill a request for information and what fees should it charge?
- **Communication between a citizen and an elected official** -- should this communication be protected from public disclosure unless one of the parties chooses to make it public? What expectation does a citizen have toward privacy of this communication and how does this affect public participation in government?



Prepared by the Office of Legislative Research and General Counsel—July 2005

Figure 2

- **Internal communication that is part of deliberative process in connection with the preparation of legislation between a member of a legislative body or its staff** -- should this communication be protected from public disclosure and how does this affect the public policy making processes?
- **Personal communication not related to the conduct of the public's business** -- should personal communication, notes, voice mail, e-mail, etc. be included or excluded as a record under GRAMA and what cost, data storage, and retrieval implications does this have?
- **Notice to persons asked to provide information to government** -- what expectation of privacy should the public have as they provide information to government and should government give notice of to whom it may release the information?

- **Harassment through multiple GRAMA requests** -- should government be required to fill information requests that may be meant to harass or cause unwarranted expense to a government entity?
- **Response to requests for information that may be the subject of a law suit** -- what changes are need to requests for information if a lawsuit is or may be filed?
- **Consolidated procedure for administrative and judicial appeals** -- should the appeals process for GRAMA issues be consolidated so that all appeals go through the State Records Committee prior to appealing to the District Court or should the option be provided to skip the Committee?

Recommendations

The task force recommends the passage of the following draft legislation:

- **Amendments to Government Records Access and Management Act**, bill one, file 102.
- **GRAMA Appeals Process and Document Request Amendments**, bill two, file 106.
- **Access and Fee Amendments to Government Records Access and Management Act**, bill three, file 282.

The following is an outline of the primary provisions of each of these bills:

GRAMA Task Force Index of Recommended Legislation

Issue #	Primary Issues Description	Reference
Draft Legislation: " Amendments to Government Records Access and Management Act "		File 0102 (BILL ONE)
1	Record definition, a record under GRAMA is not: "material that is not prepared, owned, received, or retained in connection with conduct of the public's business"	Page 6, Line 176
2	Protected records include: "internal communication that is part of the deliberative process in connection with the preparation of legislation between a member of a legislative body or the legislative body's staff"	Page 11, Line 332

Issue #	Primary Issues Description	Reference
3	Protected records include: "a communication between a citizen of the state of Utah and an elected official, unless one of the parties . . . elects to make the communication public."	Page 16, Line 473
4	Notice to person asked to provide information that may be private or controlled	Page 16, Line 483
5	Each government entity shall file its retention schedule with the State Records Committee or comply with State Archivist retention schedule	Page 17, Line 517
6	Exemption from Part 6, Collection of Information and Accuracy of Records, for the Judiciary and the Legislature	Page 18, Line 535 Page 19, Line 564
Draft Legislation: "GRAMA Appeals Process and Document Request Amendments"		File 0106 (BILL TWO)
1	Permits a government entity to forgo the typical 10 day limit to respond to a request and instead provide documents as soon as is reasonably possible when records are requested in relation to litigation against the government entity. This applies during the period starting with a notice of claim under the Governmental Immunity Act and ending on the date the lawsuit is filed. The government entity's time for response may also be set by court order.	Page 9, Lines 277–282 and Page 11, Lines 338–346 Page 3, Lines 82–87; Page 7, Line 198
2	Requires that all appeals be heard by the State Records Committee before they are appealed to the judicial system	Page 18, Lines 536–554; Page 21, Lines 624–630
3	Removes the procedure for filing a notice of appeal with the State Records Committee	Page 17, Lines 506–510
Draft Legislation: "Access and Fee Amendments to Government Records Access and Management Act"		File 0282 (BILL THREE)

Issue #	Primary Issues Description	Reference
1	Disclosure of an individual's home address and phone number	Page 3, Line 82
2	Government entity not required to manipulate information	Page 4, Line 108
3	Government entity may manipulate information at its option	Page 4, Line 114
4	Extra fees are allowed for a series of records provided in an electronic spreadsheet or database format or for resale, but fees must be reasonable and must not be designed to compete with private business. The fees do not apply if the requester is a government entity and the records are used for the benefit of the public.	Page 6, Lines 170–184
5	Allows contractors and private providers to receive private, controlled or protected records under contract with a government entity under certain circumstances. Provides that improper use of a record is a class B misdemeanor.	Page 10, Lines 205–297
6	A protected record includes: "an individual's home address, home telephone number, or personal mobile phone number" if it is provided to comply with a law and if an expectation of privacy exists	Page 18, Lines 542–549
<i>Revised November 8, 2005</i>		

AMENDMENTS TO GOVERNMENT RECORDS**ACCESS AND MANAGEMENT ACT**

2006 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill makes amendments to the treatment of records under the Government Records Access and Management Act.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of records subject to the act to exclude materials that are not connected with the conduct of the public's business;
- ▶ provides that internal communications that are part of the deliberative process in connection with the preparation of legislation between members of a legislative body or the legislative body's staff are protected records;
- ▶ provides that certain communications between citizens and elected officials are protected records;
- ▶ requires that governmental entities give notice to persons who are providing private or controlled information as to how the information is currently used and shared;
- ▶ clarifies that certain government entities shall submit records retention schedules for approval by the State Records Committee;
- ▶ provides that government entities that do not submit retention schedules for approval shall be governed by the model retention schedule maintained by the state archivist;
- ▶ clarifies that the legislature may set its own retention schedules and records management, notice, and amendment policies;
- ▶ clarifies that the judiciary may set its own retention schedules and records management policies; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **63-2-103**, as last amended by Chapters 40 and 201, Laws of Utah 2005

38 **63-2-304**, as last amended by Chapters 2, 131, 201, 214, 256 and 297, Laws of Utah
39 2005

40 **63-2-601**, as last amended by Chapter 280, Laws of Utah 1992

41 **63-2-702**, as last amended by Chapter 280, Laws of Utah 1992

42 **63-2-703**, as last amended by Chapters 228 and 280, Laws of Utah 1992

43 ENACTS:

44 **63-2-604**, Utah Code Annotated 1953



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

47 Section 1. Section **63-2-103** is amended to read:

48 **63-2-103. Definitions.**

49 As used in this chapter:

50 (1) "Audit" means:

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

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

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

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

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

61 (3) "Classification," "classify," and their derivative forms mean determining whether a
62 record series, record, or information within a record is public, private, controlled, protected, or

63 exempt from disclosure under Subsection 63-2-201(3)(b).

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

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

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

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

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

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

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

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

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

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

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

82 (6) "Controlled record" means a record containing data on individuals that is controlled
83 as provided by Section 63-2-303.

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

89 (8) "Elected official" means each person elected to a state office, county office,
90 municipal office, school board or school district office, or special district office, but does not
91 include judges standing for retention election.

92 [~~8~~] (9) "Explosive" means a chemical compound, device, or mixture:

93 (a) commonly used or intended for the purpose of producing an explosion; and

94 (b) that contains oxidizing or combustive units or other ingredients in proportions,
95 quantities, or packing so that:

96 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
97 compound or mixture may cause a sudden generation of highly heated gases; and

98 (ii) the resultant gaseous pressures are capable of:

99 (A) producing destructive effects on contiguous objects; or

100 (B) causing death or serious bodily injury.

101 ~~[(9)]~~ (10) "Government audit agency" means any governmental entity that conducts an
102 audit.

103 ~~[(10)]~~ (11) (a) "Governmental entity" means:

104 (i) executive department agencies of the state, the offices of the governor, lieutenant
105 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
106 the Board of Examiners, the National Guard, the Career Service Review Board, the State Board
107 of Education, the State Board of Regents, and the State Archives;

108 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
109 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
110 committees, except any political party, group, caucus, or rules or sifting committee of the
111 Legislature;

112 (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar
113 administrative units in the judicial branch;

114 (iv) any state-funded institution of higher education or public education; or

115 (v) any political subdivision of the state, but, if a political subdivision has adopted an
116 ordinance or a policy relating to information practices pursuant to Section 63-2-701, this
117 chapter shall apply to the political subdivision to the extent specified in Section 63-2-701 or as
118 specified in any other section of this chapter that specifically refers to political subdivisions.

119 (b) "Governmental entity" also means every office, agency, board, bureau, committee,
120 department, advisory board, or commission of an entity listed in Subsection (10)(a) that is
121 funded or established by the government to carry out the public's business.

122 ~~[(11)]~~ (12) "Gross compensation" means every form of remuneration payable for a
123 given period to an individual for services provided including salaries, commissions, vacation
124 pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any

125 similar benefit received from the individual's employer.

126 ~~[(12)]~~ (13) "Individual" means a human being.

127 ~~[(13)]~~ (14) (a) "Initial contact report" means an initial written or recorded report,
128 however titled, prepared by peace officers engaged in public patrol or response duties
129 describing official actions initially taken in response to either a public complaint about or the
130 discovery of an apparent violation of law, which report may describe:

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

132 (ii) names of victims;

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

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

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

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

140 (b) Initial contact reports do not include follow-up or investigative reports prepared
141 after the initial contact report. However, if the information specified in Subsection (13)(a)
142 appears in follow-up or investigative reports, it may only be treated confidentially if it is
143 private, controlled, protected, or exempt from disclosure under Subsection 63-2-201(3)(b).

144 (15) "Legislative body" means:

145 (a) the Legislature;

146 (b) a county legislative body as defined in Subsection 68-3-12(2);

147 (c) a city council or town council in the traditional management arrangement
148 established by Title 10, Chapter 3, Part 1, Governing Body; or

149 (d) a municipal council in the council-mayor or council-manager optional forms of
150 government defined in Section 10-3-101.

151 ~~[(14)]~~ (16) "Notice of compliance" means a statement confirming that a governmental
152 entity has complied with a records committee order.

153 ~~[(15)]~~ (17) "Person" means:

154 (a) an individual;

155 (b) a nonprofit or profit corporation;

156 (c) a partnership;

157 (d) a sole proprietorship;

158 (e) other type of business organization; or

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

160 [~~(16)~~] (18) "Private provider" means any person who contracts with a governmental
161 entity to provide services directly to the public.

162 [~~(17)~~] (19) "Private record" means a record containing data on individuals that is
163 private as provided by Section 63-2-302.

164 [~~(18)~~] (20) "Protected record" means a record that is classified protected as provided by
165 Section 63-2-304.

166 [~~(19)~~] (21) "Public record" means a record that is not private, controlled, or protected
167 and that is not exempt from disclosure as provided in Subsection 63-2-201(3)(b).

168 [~~(20)~~] (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph,
169 film, card, tape, recording, electronic data, or other documentary material regardless of physical
170 form or characteristics:

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

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

175 (b) "Record" does not mean:

176 (i) material that is not prepared, owned, received, or retained in connection with the
177 conduct of the public's business;

178 [~~(i)~~] (ii) a temporary draft or similar material prepared for the originator's personal use
179 or prepared by the originator for the personal use of an individual for whom the originator is
180 working;

181 [~~(ii)~~] (iii) material that is legally owned by an individual in the individual's private
182 capacity;

183 [~~(iii)~~] (iv) material to which access is limited by the laws of copyright or patent unless
184 the copyright or patent is owned by a governmental entity or political subdivision;

185 [~~(iv)~~] (v) proprietary software;

186 [~~(v)~~] (vi) junk mail or a commercial publication received by a governmental entity or

187 an official or employee of a governmental entity;

188 ~~[(vi)]~~ (vii) a book that is cataloged, indexed, or inventoried and contained in the
189 collections of a library open to the public;

190 ~~[(vii)]~~ (viii) material that is cataloged, indexed, or inventoried and contained in the
191 collections of a library open to the public, regardless of physical form or characteristics of the
192 material;

193 ~~[(viii)]~~ (ix) a daily calendar or other personal note prepared by the originator for the
194 originator's personal use or for the personal use of an individual for whom the originator is
195 working;

196 ~~[(ix)]~~ (x) a computer program that is developed or purchased by or for any
197 governmental entity for its own use; or

198 ~~[(x)]~~ (xi) a note or internal memorandum prepared as part of the deliberative process
199 by:

200 (A) a member of the judiciary;

201 (B) an administrative law judge;

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

203 (D) a member of any other body charged by law with performing a quasi-judicial
204 function.

205 ~~[(21)]~~ (23) "Record series" means a group of records that may be treated as a unit for
206 purposes of designation, description, management, or disposition.

207 ~~[(22)]~~ (24) "Records committee" means the State Records Committee created in
208 Section 63-2-501.

209 ~~[(23)]~~ (25) "Records officer" means the individual appointed by the chief
210 administrative officer of each governmental entity, or the political subdivision to work with
211 state archives in the care, maintenance, scheduling, designation, classification, disposal, and
212 preservation of records.

213 ~~[(24)]~~ (26) "Schedule," "scheduling," and their derivative forms mean the process of
214 specifying the length of time each record series should be retained by a governmental entity for
215 administrative, legal, fiscal, or historical purposes and when each record series should be
216 transferred to the state archives or destroyed.

217 ~~[(25)]~~ (27) "Sponsored research" means research, training, and other sponsored

218 activities as defined by the federal Executive Office of the President, Office of Management
219 and Budget:

220 (a) conducted:

221 (i) by an institution within the state system of higher education defined in Section
222 53B-1-102; and

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

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

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

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

228 [~~(26)~~] (28) "State archives" means the Division of Archives and Records Service
229 created in Section 63-2-901.

230 [~~(27)~~] (29) "State archivist" means the director of the state archives.

231 [~~(28)~~] (30) "Summary data" means statistical records and compilations that contain
232 data derived from private, controlled, or protected information but that do not disclose private,
233 controlled, or protected information.

234 Section 2. Section **63-2-304** is amended to read:

235 **63-2-304. Protected records.**

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

237 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
238 has provided the governmental entity with the information specified in Section 63-2-308;

239 (2) commercial information or nonindividual financial information obtained from a
240 person if:

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

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

246 (c) the person submitting the information has provided the governmental entity with
247 the information specified in Section 63-2-308;

248 (3) commercial or financial information acquired or prepared by a governmental entity

249 to the extent that disclosure would lead to financial speculations in currencies, securities, or
250 commodities that will interfere with a planned transaction by the governmental entity or cause
251 substantial financial injury to the governmental entity or state economy;

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

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

257 (6) records the disclosure of which would impair governmental procurement
258 proceedings or give an unfair advantage to any person proposing to enter into a contract or
259 agreement with a governmental entity, except that this Subsection (6) does not restrict the right
260 of a person to see bids submitted to or by a governmental entity after bidding has closed;

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

264 (a) public interest in obtaining access to the information outweighs the governmental
265 entity's need to acquire the property on the best terms possible;

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

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

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

273 (e) the property under consideration for public acquisition is a single family residence
274 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
275 the property as required under Section 78-34-4.5;

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

280 (a) the public interest in access outweighs the interests in restricting access, including
281 the governmental entity's interest in maximizing the financial benefit of the transaction; or

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

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

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

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

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

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

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

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

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

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

309 (13) records that, if disclosed, would reveal recommendations made to the Board of
310 Pardons and Parole by an employee of or contractor for the Department of Corrections, the

311 Board of Pardons and Parole, or the Department of Human Services that are based on the
312 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
313 jurisdiction;

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

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

319 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
320 litigation that are not available under the rules of discovery;

321 (17) records disclosing an attorney's work product, including the mental impressions or
322 legal theories of an attorney or other representative of a governmental entity concerning
323 litigation;

324 (18) records of communications between a governmental entity and an attorney
325 representing, retained, or employed by the governmental entity if the communications would be
326 privileged as provided in Section 78-24-8;

327 (19) (a) (i) personal files of a state legislator, including [personal] correspondence to or
328 from a member of the Legislature[~~, provided that~~ subject to the provisions of Subsection (51);
329 and

330 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
331 legislative action or policy may not be classified as protected under this section; and

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

334 (A) members of a legislative body;

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

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

337 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
338 legislative action or policy may not be classified as protected under this section;

339 (20) (a) records in the custody or control of the Office of Legislative Research and
340 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
341 legislation or contemplated course of action before the legislator has elected to support the

342 legislation or course of action, or made the legislation or course of action public; and

343 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
344 Office of Legislative Research and General Counsel is a public document unless a legislator
345 asks that the records requesting the legislation be maintained as protected records until such
346 time as the legislator elects to make the legislation or course of action public;

347 (21) research requests from legislators to the Office of Legislative Research and
348 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
349 in response to these requests;

350 (22) drafts, unless otherwise classified as public;

351 (23) records concerning a governmental entity's strategy about collective bargaining or
352 pending litigation;

353 (24) records of investigations of loss occurrences and analyses of loss occurrences that
354 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
355 Uninsured Employers' Fund, or similar divisions in other governmental entities;

356 (25) records, other than personnel evaluations, that contain a personal recommendation
357 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
358 personal privacy, or disclosure is not in the public interest;

359 (26) records that reveal the location of historic, prehistoric, paleontological, or
360 biological resources that if known would jeopardize the security of those resources or of
361 valuable historic, scientific, educational, or cultural information;

362 (27) records of independent state agencies if the disclosure of the records would
363 conflict with the fiduciary obligations of the agency;

364 (28) records of an institution within the state system of higher education defined in
365 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
366 retention decisions, and promotions, which could be properly discussed in a meeting closed in
367 accordance with Title 52, Chapter 4, Open and Public Meetings, provided that records of the
368 final decisions about tenure, appointments, retention, promotions, or those students admitted,
369 may not be classified as protected under this section;

370 (29) records of the governor's office, including budget recommendations, legislative
371 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
372 policies or contemplated courses of action before the governor has implemented or rejected

373 those policies or courses of action or made them public;

374 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
375 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
376 recommendations in these areas;

377 (31) records provided by the United States or by a government entity outside the state
378 that are given to the governmental entity with a requirement that they be managed as protected
379 records if the providing entity certifies that the record would not be subject to public disclosure
380 if retained by it;

381 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
382 except as provided in Section 52-4-7;

383 (33) records that would reveal the contents of settlement negotiations but not including
384 final settlements or empirical data to the extent that they are not otherwise exempt from
385 disclosure;

386 (34) memoranda prepared by staff and used in the decision-making process by an
387 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
388 other body charged by law with performing a quasi-judicial function;

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

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

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

401 (a) the donor requests anonymity in writing;

402 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
403 classified protected by the governmental entity under this Subsection (37); and

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

409 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
410 73-18-13;

411 (39) a notification of workers' compensation insurance coverage described in Section
412 34A-2-205;

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

416 (i) unpublished lecture notes;

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

418 (A) relating to research; and

419 (B) of:

420 (I) the institution within the state system of higher education defined in Section
421 53B-1-102; or

422 (II) a sponsor of sponsored research;

423 (iii) unpublished manuscripts;

424 (iv) creative works in process;

425 (v) scholarly correspondence; and

426 (vi) confidential information contained in research proposals;

427 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
428 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

429 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

430 (41) (a) records in the custody or control of the Office of Legislative Auditor General
431 that would reveal the name of a particular legislator who requests a legislative audit prior to the
432 date that audit is completed and made public; and

433 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
434 Office of the Legislative Auditor General is a public document unless the legislator asks that

435 the records in the custody or control of the Office of Legislative Auditor General that would
436 reveal the name of a particular legislator who requests a legislative audit be maintained as
437 protected records until the audit is completed and made public;

438 (42) records that provide detail as to the location of an explosive, including a map or
439 other document that indicates the location of:

440 (a) a production facility; or

441 (b) a magazine;

442 (43) information contained in the database described in Section 62A-3-311.1;

443 (44) information contained in the Management Information System and Licensing
444 Information System described in Title 62A, Chapter 4a, Child and Family Services;

445 (45) information regarding National Guard operations or activities in support of the
446 National Guard's federal mission;

447 (46) records provided by any pawnbroker or pawnshop to a law enforcement agency or
448 to the central database in compliance with Title 13, Chapter 32a, Pawnshop Transaction
449 Information Act;

450 (47) information regarding food security, risk, and vulnerability assessments performed
451 by the Department of Agriculture and Food;

452 (48) except to the extent that the record is exempt from this chapter pursuant to Section
453 63-2-106, records related to an emergency plan or program prepared or maintained by the
454 Division of Emergency Services and Homeland Security the disclosure of which would
455 jeopardize:

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

457 (b) the security of:

458 (i) governmental property;

459 (ii) governmental programs; or

460 (iii) the property of a private person who provides the Division of Emergency Services
461 and Homeland Security information;

462 (49) records of the Department of Agriculture and Food relating to the National
463 Animal Identification System or any other program that provides for the identification, tracing,
464 or control of livestock diseases, including any program established under Title 4, Chapter 24,
465 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Utah Livestock Inspection and

466 Quarantine; ~~and~~

467 (50) as provided in Section 26-39-109:

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

471 (b) information or records related to a complaint received by the Department of Health
472 from an anonymous complainant regarding a child care program or residential child care~~[-]; and~~

473 (51) a communication between a citizen of the state of Utah and an elected official,
474 unless one of the parties to the communication elects to make the communication public.

475 Section 3. Section **63-2-601** is amended to read:

476 **Part 6. Collection of Information and Accuracy of Records**

477 **63-2-601. Rights of individuals on whom data is maintained -- Classification**
478 **statement -- Notice to provider of information.**

479 (1) (a) Each governmental entity shall file with the state archivist a statement
480 explaining the purposes for which a record series that is designated as private or controlled
481 ~~[are]~~ is collected and used by that governmental entity.

482 (b) ~~[That]~~ The statement filed under Subsection (1)(a) is a public record.

483 (2) (a) ~~[Upon request, each]~~ A governmental entity shall ~~[explain]~~ provide notice of the
484 following to [an individual] a person that is asked to furnish information that could be
485 classified as a private or controlled record:

486 ~~[(a)]~~ (i) the reasons the ~~[individual]~~ person is asked to furnish ~~[to the governmental~~
487 ~~entity]~~ the information ~~[that could be classified private or controlled];~~

488 ~~[(b)]~~ (ii) the intended uses of the information; ~~[and]~~

489 ~~[(c)]~~ (iii) the consequences for refusing to provide the information~~[-]; and~~

490 (iv) the classes of persons and the governmental entities that currently:

491 (A) share the information with the governmental entity; or

492 (B) receive the information from the governmental entity on a regular or contractual
493 basis.

494 (b) The notice shall be:

495 (i) posted in a prominent place at all locations where the governmental entity collects
496 the information; or

497 (ii) included as part of the documents or forms that are used by the governmental entity
498 to collect the information.

499 (3) Upon request, each governmental entity shall explain to a person:

500 (a) the reasons the person is asked to furnish information that could be classified as a
501 private or controlled record;

502 (b) the intended uses of the information referred to in Subsection (3)(a);

503 (c) the consequences for refusing to provide the information referred to in Subsection
504 (3)(a); and

505 (d) the reasons and circumstances under which the information referred to in
506 Subsection (3)(a) may be shared with or provided to other persons or governmental entities.

507 ~~(3)~~ (4) A governmental entity may ~~[not]~~ use private or controlled records only for
508 those purposes [other than those]:

509 (a) given in the statement filed with the state archivist under Subsection (1); or [for
510 purposes other than those for]

511 (b) for which another governmental entity [could] may use the record under Section
512 63-2-206.

513 Section 4. Section **63-2-604** is enacted to read:

514 **63-2-604. Retention and disposition of records.**

515 (1) (a) Except for a governmental entity that is permitted to maintain its own retention
516 schedules under Part 7, Applicability to Political Subdivisions, the Judiciary, and the
517 Legislature, each governmental entity shall file with the State Records Committee a proposed
518 schedule for the retention and disposition of each type of material that is defined as a record
519 under this chapter.

520 (b) After a retention schedule is reviewed and approved by the State Records
521 Committee under paragraph 63-2-502(1)(b), the governmental entity shall maintain and destroy
522 records in accordance with the retention schedule.

523 (c) If a governmental entity subject to the provisions of the section has not received an
524 approved retention schedule for a specific type of material that is classified as a record under
525 this chapter, the model retention schedule maintained by the state archivist shall govern the
526 retention and destruction of that type of material.

527 (2) A retention schedule that is filed with or approved by the State Records Committee

528 under the requirements of this section is a public record.

529 Section 5. Section **63-2-702** is amended to read:

530 **63-2-702. Applicability to judiciary.**

531 (1) The judiciary is subject to the provisions of this chapter except as provided in this
532 section.

533 (2) (a) The judiciary is not subject to Part 4 of this chapter except as provided in
534 Subsection (5).

535 (b) The judiciary is not subject to [~~Part 5~~] Parts 5 and 6 of this chapter.

536 (c) The judiciary is subject to only the following sections in Part 9 of this chapter:
537 Sections 63-2-905 and 63-2-906.

538 (3) The Judicial Council, the Administrative Office of the Courts, the courts, and other
539 administrative units in the judicial branch shall designate and classify their records in
540 accordance with Sections 63-2-301 through 63-2-304.

541 (4) Substantially consistent with the provisions of this chapter, the Judicial Council
542 shall:

543 (a) make rules governing requests for access, fees, classification, designation,
544 segregation, management, retention, denials and appeals of requests for access and retention,
545 and amendment of judicial records;

546 (b) establish an appellate board to handle appeals from denials of requests for access
547 and provide that a requester who is denied access by the appellate board may file a lawsuit in
548 district court; and

549 (c) provide standards for the management and retention of judicial records substantially
550 consistent with Section 63-2-903.

551 (5) Rules governing appeals from denials of requests for access shall substantially
552 comply with the time limits provided in Section 63-2-204 and Part 4 of this chapter.

553 (6) Upon request, the state archivist shall:

554 (a) assist with and advise concerning the establishment of a records management
555 program in the judicial branch; and

556 (b) as required by the judiciary, provide program services similar to those available to
557 the executive and legislative branches of government as provided in this chapter.

558 Section 6. Section **63-2-703** is amended to read:

559 **63-2-703. Applicability to the Legislature.**

560 (1) The Legislature and its staff offices shall designate and classify records in
561 accordance with Sections 63-2-301 through 63-2-304 as public, private, controlled, or
562 protected.

563 (2) (a) The Legislature and its staff offices are not subject to Section 63-2-203 or to
564 Part 4 [~~or~~], 5, or 6 of this chapter.

565 (b) The Legislature is subject to only the following sections in Part 9 of this chapter:
566 Sections 63-2-902, 63-2-906, and 63-2-909.

567 (3) The Legislature, through the Legislative Management Committee[;]:

568 (a) shall establish policies to handle requests for [~~records and~~] classification,
569 designation, fees, access, denials, segregation, appeals, management, retention, and amendment
570 of records; and

571 (b) may establish an appellate board to hear appeals from denials of access.

572 (4) Policies shall include reasonable times for responding to access requests consistent
573 with the provisions of Part 2 of this chapter, fees, and reasonable time limits for appeals.

574 (5) Upon request, the state archivist shall:

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

577 (b) as required by the Legislature, provide program services similar to those available
578 to the executive branch of government, as provided in this chapter.

Legislative Review Note
as of 10-19-05 3:40 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

GRAMA APPEALS PROCESS AND DOCUMENT**REQUEST AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies the Government Records Access and Management Act to address the appeals process and document requests.

Highlighted Provisions:

This bill:

- ▶ designates a request for a record that relates to a notice of claim under the Governmental Immunity Act of Utah as an extraordinary circumstance;
- ▶ requires that appeals be heard by the state records committee before being appealed to the judiciary;
- ▶ clarifies language relating to time requirements for the filing of appeals and requests for judicial review;
- ▶ removes the procedure for filing a notice of intent to appeal prior to seeking judicial appeal of a records committee order;
- ▶ modifies language related to attorney's fees to accommodate the requirement for records committee review; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53B-16-303, as enacted by Chapter 280, Laws of Utah 1992

63-2-201, as last amended by Chapter 40, Laws of Utah 2005

63-2-202, as last amended by Chapter 201, Laws of Utah 2005

32 **63-2-204**, as last amended by Chapters 40 and 71, Laws of Utah 2005
 33 **63-2-401**, as last amended by Chapter 280, Laws of Utah 1992
 34 **63-2-403**, as last amended by Chapters 40 and 201, Laws of Utah 2005
 35 **63-2-404**, as last amended by Chapter 133, Laws of Utah 1995
 36 **63-2-701**, as last amended by Chapter 99, Laws of Utah 1994
 37 **63-2-802**, as last amended by Chapter 102, Laws of Utah 2005

38 REPEALS:

39 **63-2-402**, as last amended by Chapter 280, Laws of Utah 1992

40

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

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

43 **53B-16-303. Access to restricted records.**

44 (1) Notwithstanding any other provision of Title 63, Chapter 2, Government Records
 45 Access and Management Act, access to records restricted by this part shall only be permitted
 46 upon:

47 ~~(1)~~ (a) written consent of the public institution of higher education originating,
 48 receiving, or maintaining such records; or

49 ~~(2)~~ (b) a finding by the State Records Committee or a court that the record has not
 50 been properly classified as restricted under Section 63-2-302, ~~[provided]~~ except that the review
 51 of a restricted classification of a record ~~[shall]~~ may not include considerations of weighing
 52 public and private interests regarding access to a properly classified record as contained in
 53 Subsection 63-2-403(11)(b) or 63-2-404~~(8)~~(7) or Section 63-2-308.

54 (2) Nothing in ~~[this]~~ Subsection (1)(b) shall be construed to limit the authority of the
 55 State Board of Regents to reclassify and disclose a record of a public institution of higher
 56 education.

57 Section 2. Section **63-2-201** is amended to read:

58 **63-2-201. Right to inspect records and receive copies of records.**

59 (1) Every person has the right to inspect a public record free of charge, and the right to
 60 take a copy of a public record during normal working hours, subject to Sections 63-2-203 and
 61 63-2-204.

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

63 (3) The following records are not public:

64 (a) a record that is private, controlled, or protected under Sections 63-2-302,
65 63-2-302.5, 63-2-303, and 63-2-304; and

66 (b) a record to which access is restricted pursuant to court order, court rule, another
67 state statute, federal statute, or federal regulation, including records for which access is
68 governed or restricted as a condition of participation in a state or federal program or for
69 receiving state or federal funds.

70 (4) Only a record specified in Section 63-2-302, 63-2-302.5, 63-2-303, or 63-2-304
71 may be classified private, controlled, or protected.

72 (5) (a) A governmental entity may not disclose a record that is private, controlled, or
73 protected to any person except as provided in Subsection (5)(b), Section 63-2-202, 63-2-206, or
74 63-2-302.5.

75 (b) A governmental entity may disclose a record that is private under Subsection
76 63-2-302(2) or protected under Section 63-2-304 to persons other than those specified in
77 Section 63-2-202 or 63-2-206 if the head of a governmental entity, or a designee, determines
78 that:

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

80 (ii) the interests favoring access outweighs the interest favoring restriction of access.

81 (6) (a) The disclosure of a record to which access is governed or limited pursuant to
82 court order, court rule, another state statute, federal statute, or federal regulation, including a
83 record for which access is governed or limited as a condition of participation in a state or
84 federal program or for receiving state or federal funds, is governed by the specific provisions of
85 that [~~statute~~] order, rule, statute, or regulation.

86 (b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter
87 is not inconsistent with the [~~statute~~] order, rule, statute, or regulation.

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

89 (a) the person requesting the record has a right to inspect [~~it~~] the record;

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

91 (c) the person pays the lawful fees.

92 (8) (a) [~~A~~] In response to a request, a governmental entity is not required to:

93 (i) create a record [~~in response to a request.~~]; or

94 (ii) fulfill a person's records request if:

95 (A) the request unreasonably duplicates prior records requests from that person; or

96 (B) the information requested is included in a public publication or product produced

97 by a governmental entity.

98 (b) Upon request, a governmental entity shall provide a record in a particular format if:

99 (i) the governmental entity is able to do so without unreasonably interfering with the
100 governmental entity's duties and responsibilities; and

101 (ii) the requester agrees to pay the governmental entity for its costs incurred in
102 providing the record in the requested format in accordance with Section 63-2-203.

103 ~~[(c) Nothing in this section requires a governmental entity to fulfill a person's records~~
104 ~~request if the request unreasonably duplicates prior records requests from that person.]~~

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

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

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

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

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

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

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

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

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

128 (12) A governmental entity may provide access to an electronic copy of a record in lieu
129 of providing access to its paper equivalent.

130 Section 3. Section **63-2-202** is amended to read:

131 **63-2-202. Access to private, controlled, and protected documents.**

132 (1) Upon request, a governmental entity shall disclose a private record to:

133 (a) the subject of the record;

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

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

138 (d) any other individual who:

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

140 (ii) submits a notarized release from the subject of the record or his legal representative
141 dated no more than 90 days before the date the request is made; or

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

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

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

147 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
148 Power.

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

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

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

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

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

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

158 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
159 Power.

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

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

166 (4) Upon request, a governmental entity shall disclose a protected record to:

167 (a) the person who submitted the record;

168 (b) any other individual who:

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

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

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

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

176 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
177 Power; or

178 (d) the owner of a mobile home park, subject to the conditions of Subsection
179 41-1a-116(5).

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

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

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

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

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

189 (c) the court has considered and, where appropriate, limited the requester's use and

190 further disclosure of the record in order to protect:

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

192 (ii) business confidentiality interests in the case of records protected under Subsection
193 63-2-304(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

195 (d) to the extent the record is properly classified private, controlled, or protected, the
196 interests favoring access, considering limitations thereon, outweigh the interests favoring
197 restriction of access; and

198 (e) where access is restricted by [α] an order, rule, statute, or regulation referred to in
199 Subsection 63-2-201(3)(b), the court has authority independent of this chapter to order
200 disclosure.

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

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

205 (ii) determines that:

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

207 (B) the value of the research outweighs the infringement upon personal privacy;

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

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

212 (iv) prohibits the researcher from:

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

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

217 (v) secures from the researcher a written statement of the researcher's understanding of

218 and agreement to the conditions of this Subsection (8) and the researcher's understanding that
219 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution
220 under Section 63-2-801.

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

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

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

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

230 (ii) protected under Section 63-2-304 subject to Section 63-2-308 if a claim for
231 business confidentiality has been made under Section 63-2-308.

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

234 (i) private under Section 63-2-302;

235 (ii) controlled under Section 63-2-303; or

236 (iii) protected under Section 63-2-304 subject to Section 63-2-308 if a claim for
237 business confidentiality has been made under Section 63-2-308.

238 (c) Under Subsection 63-2-404[(8)](7), the court may require the disclosure of records
239 that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under
240 Section 63-2-304 to persons other than those specified in this section.

241 Section 4. Section **63-2-204** is amended to read:

242 **63-2-204. Requests -- Time limit for response and extraordinary circumstances.**

243 (1) A person making a request for a record shall furnish the governmental entity with a
244 written request containing:

245 (a) the person's name, mailing address, and daytime telephone number, if available;

246 and

247 (b) a description of the record requested that identifies the record with reasonable
248 specificity.

249 (2) A governmental entity may make rules in accordance with Title 63, Chapter 46a,
250 Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall
251 be directed.

252 (3) (a) As soon as reasonably possible, but no later than ten business days after
253 receiving a written request, or five business days after receiving a written request if the
254 requester demonstrates that expedited response to the record request benefits the public rather
255 than the person, the governmental entity shall respond to the request by:

256 (i) approving the request and providing the record;

257 (ii) denying the request;

258 (iii) notifying the requester that it does not maintain the record and providing, if
259 known, the name and address of the governmental entity that does maintain the record; or

260 (iv) notifying the requester that because of one of the extraordinary circumstances
261 listed in Subsection (4), it cannot immediately approve or deny the request.

262 (b) The notice described in Subsection (3)(a)(iv) shall:

263 (i) describe the circumstances relied upon; and

264 (ii) specify the date when the records will be available.

265 (c) Any person who requests a record to obtain information for a story or report for
266 publication or broadcast to the general public is presumed to be acting to benefit the public
267 rather than a person.

268 (4) The following circumstances constitute "extraordinary circumstances" that allow a
269 governmental entity to delay approval or denial by an additional period of time as specified in
270 Subsection (5) if the governmental entity determines that due to the extraordinary
271 circumstances it cannot respond within the time limits provided in Subsection (3):

272 (a) another governmental entity is using the record, in which case the originating
273 governmental entity shall promptly request that the governmental entity currently in possession
274 return the record;

275 (b) another governmental entity is using the record as part of an audit, and returning the
276 record before the completion of the audit would impair the conduct of the audit;

277 (c) the request is:

278 (i) for a record that relates to a notice of claim filed under Title 63, Chapter 30d,
279 Governmental Immunity Act of Utah; and

280 (ii) submitted to the governmental entity during the period beginning with the date the
281 notice of claim is filed and ending on the date an action is filed in relation to the notice of
282 claim.

283 ~~(c)~~ (d) (i) the request is for a voluminous quantity of records or a record series
284 containing a substantial number of records;

285 (ii) the requester seeks a substantial number of records or records series in requests
286 filed within five working days of each other;

287 ~~(d)~~ (e) the governmental entity is currently processing a large number of records
288 requests;

289 ~~(e)~~ (f) the request requires the governmental entity to review a large number of
290 records to locate the records requested;

291 ~~(f)~~ (g) the decision to release a record involves legal issues that require the
292 governmental entity to seek legal counsel for the analysis of statutes, rules, ordinances,
293 regulations, or case law;

294 ~~(g)~~ (h) segregating information that the requester is entitled to inspect from
295 information that the requester is not entitled to inspect requires extensive editing; or

296 ~~(h)~~ (i) segregating information that the requester is entitled to inspect from
297 information that the requester is not entitled to inspect requires computer programming.

298 (5) If one of the extraordinary circumstances listed in Subsection (4) precludes
299 approval or denial within the time specified in Subsection (3), the following time limits apply
300 to the extraordinary circumstances:

301 (a) for claims under Subsection (4)(a), the governmental entity currently in possession
302 of the record shall return the record to the originating entity within five business days of the
303 request for the return unless returning the record would impair the holder's work;

304 (b) for claims under Subsection (4)(b), the originating governmental entity shall notify
305 the requester when the record is available for inspection and copying;

306 (c) for claims under Subsections (4)(c), (d), ~~and~~ (e), and (f) the governmental entity
307 shall:

308 (i) disclose the records that it has located which the requester is entitled to inspect;

309 (ii) provide the requester with an estimate of the amount of time it will take to finish
310 the work required to respond to the request;

311 (iii) complete the work and disclose those records that the requester is entitled to
312 inspect as soon as reasonably possible; and

313 (iv) for any person that does not establish a right to an expedited response as
314 authorized by Subsection (3)(a), a governmental entity may choose to:

315 (A) require the person to provide for copying of the records as provided in Subsection
316 63-2-201(9); or

317 (B) treat a request for multiple records as separate record requests, and respond
318 sequentially to each request;

319 (d) for claims under Subsection (4)~~(f)~~(g), the governmental entity shall either approve
320 or deny the request within five business days after the response time specified for the original
321 request has expired;

322 (e) for claims under Subsection (4)~~(g)~~(h), the governmental entity shall fulfill the
323 request within 15 business days from the date of the original request; or

324 (f) for claims under Subsection (4)~~(h)~~(i), the governmental entity shall complete its
325 programming and disclose the requested records as soon as reasonably possible.

326 (6) (a) If a request for access is submitted to an office of a governmental entity other
327 than that specified by rule in accordance with Subsection (2), the office shall promptly forward
328 the request to the appropriate office.

329 (b) If the request is forwarded promptly, the time limit for response begins when the
330 record is received by the office specified by rule.

331 (7) If the governmental entity fails to provide the requested records or issue a denial
332 within the specified time period, that failure is considered the equivalent of a determination
333 denying access to the record.

334 Section 5. Section **63-2-401** is amended to read:

335 **63-2-401. Appeal to head of governmental entity.**

336 (1) (a) Any person aggrieved by a governmental entity's access determination under
337 this chapter, including a person not a party to the governmental entity's proceeding, may appeal
338 the determination [~~within 30 days to~~] by filing a notice of appeal with the chief administrative
339 officer of the governmental entity [~~by filing a notice of appeal~~] within 30 days after the date the
340 determination is issued.

341 (b) If a governmental entity claims extraordinary circumstances and specifies the date

342 when the records will be available under Subsection 63-2-204(3), and, if the requester believes
343 the extraordinary circumstances do not exist or that the time specified is unreasonable, the
344 requester may appeal the governmental entity's claim of extraordinary circumstances or date for
345 compliance by filing a notice of appeal within 30 days after [~~notification~~] the date the
346 governmental entity issues notice of a claim of extraordinary circumstances [~~by the~~
347 ~~governmental entity~~], despite the lack of a "determination" or its equivalent under Subsection
348 63-2-204(7).

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

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

351 (b) the relief sought.

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

354 (4) (a) If the appeal involves a record that is the subject of a business confidentiality
355 claim under Section 63-2-308, the chief administrative officer shall:

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

359 (ii) send notice of the business confidentiality claim and the schedule for the chief
360 administrative officer's determination to the requester within three business days after
361 [~~receiving~~] the date the chief administrative officer received notice of the requester's appeal.

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

364 (5) (a) The chief administrative officer shall make a determination on the appeal within
365 the [~~following period of time~~] later of:

366 (i) [~~within~~] five business days after the date of the chief administrative officer's receipt
367 of the notice of appeal; or

368 (ii) [~~within~~] if the record or issue is subject to a claim of business confidentiality,
369 twelve business days after the date the governmental entity sends the requester's notice of
370 appeal to a person who submitted a claim of business confidentiality.

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

373 the appeal.

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

376 (6) The chief administrative officer may, upon consideration and weighing of the
377 various interests and public policies pertinent to the classification and disclosure or
378 nondisclosure, order the disclosure of information properly classified as private under Section
379 63-2-302(2) or protected under Section 63-2-304 if the interests favoring access outweigh the
380 interests favoring restriction of access.

381 (7) The governmental entity shall send written notice of the determination of the chief
382 administrative officer to all participants. If the chief administrative officer affirms the denial in
383 whole or in part, the denial shall include a statement containing:

384 (a) notice that the requester has the right to appeal the denial to [~~either~~] the records
385 committee [~~or district court,~~];

386 (b) the time limits for filing an appeal[~~;~~]; and

387 (c) the name and business address of the executive secretary of the records committee.

388 (8) (a) A person [~~aggrieved by a governmental entity's classification or designation~~
389 ~~determination under this chapter, but~~] who is not requesting access to [~~the records,~~] a record
390 but is otherwise aggrieved by a governmental entity's classification or designation
391 determination made under this chapter may appeal that determination using the procedures
392 provided in this section.

393 (b) If a [~~nonrequester~~] person described in Subsection (8)(a) is the only appellant, the
394 procedures provided in this section shall apply, except that the determination on the appeal
395 shall be made within 30 days after [~~receiving~~] the date that the notice of appeal is received.

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

397 Section 6. Section **63-2-403** is amended to read:

398 **63-2-403. Appeals to the records committee.**

399 (1) [~~A petitioner~~] Any person or entity, including an aggrieved person who did not
400 participate in the appeal to the governmental entity's chief administrative officer, may appeal a
401 determination of the chief administrative officer to the records committee by filing a notice of
402 appeal with the executive secretary of the records committee no later than:

403 (a) 30 days after the date the chief administrative officer of the governmental entity

404 [~~has granted or denied~~] grants or denies the record request in whole or in part, including a
405 denial under Subsection 63-2-204(7); or

406 (b) 45 days after the date of the original request for a record if:

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

408 (ii) the chief administrative officer has failed to make a determination under Section
409 63-2-401.

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

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

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

413 (c) the relief sought.

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

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

418 (i) schedule a hearing for the records committee to discuss the appeal at the next
419 regularly scheduled committee meeting falling at least 14 days after the date the notice of
420 appeal is filed but no longer than 45 days after the date the notice of appeal was filed except
421 that the records committee may schedule an expedited hearing upon application of the
422 petitioner and good cause shown;

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

424 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing
425 to:

426 (A) each member of the records committee;

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

429 (C) any person who made a business confidentiality claim under Section 63-2-308 for a
430 record that is the subject of the appeal; and

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

433 (b) (i) The executive secretary of the records committee may decline to schedule a
434 hearing if the record series that is the subject of the appeal has been found by the committee in

435 a previous hearing involving the same government entity to be appropriately classified as
436 private, controlled, or protected.

437 (ii) (A) If the executive secretary of the records committee declines to schedule a
438 hearing under this Subsection (4)(b), the executive secretary of the records committee shall
439 send a notice to the petitioner indicating that the request for hearing has been denied and the
440 reason for the denial.

441 (B) The committee shall make rules to implement this section as provided by Title 63,
442 Chapter 46a, Utah Administrative Rulemaking Act.

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

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

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

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

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

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

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

461 (9) (a) The records committee may review the disputed records. However, if the
462 committee is weighing the various interests under Subsection [~~(11)~~] (12), the committee must
463 review the disputed records. The review shall be in camera.

464 (b) Members of the records committee may not disclose any information or record
465 reviewed by the committee in camera unless the disclosure is otherwise authorized by this

466 chapter.

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

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

472 ~~[(11)]~~ (11) The records committee's review shall be de novo.

473 ~~[(11)]~~ (12) (a) No later than three business days after the date of the hearing, the
474 records committee shall issue a signed order either:

475 (i) granting the petition in whole or in part; or

476 (ii) upholding the determination of the governmental entity in whole or in part.

477 (b) The records committee may, upon consideration and weighing of the various
478 interests and public policies pertinent to the classification and disclosure or nondisclosure,
479 order the disclosure of information properly classified as private, controlled, or protected if the
480 public interest favoring access outweighs the interest favoring restriction of access.

481 (c) In making a determination under Subsection ~~[(11)]~~ (12)(b), the records committee
482 shall consider and, where appropriate, limit the requester's use and further disclosure of the
483 record in order to protect:

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

485 (ii) business confidentiality interests in the case of a record protected under Subsection
486 63-2-304(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

488 ~~[(12)]~~ (13) The order of the records committee shall include:

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

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

496 (c) a statement that any party to the proceeding before the records committee may

497 appeal the records committee's decision to district court; ~~[and]~~

498 (d) a brief summary of the appeals process~~;~~;

499 (e) the time limits for filing an appeal~~;~~; and

500 (f) a notice that in order to protect its rights on appeal, the party may wish to seek
501 advice from an attorney.

502 ~~[(13)]~~ (14) If the records committee fails to issue a decision within 35 days ~~[of the~~
503 ~~filing of]~~ after the date the notice of appeal was filed, that failure shall be considered the
504 equivalent of an order denying the appeal. The petitioner shall notify the records committee in
505 writing if the petitioner considers the appeal denied.

506 ~~[(14)(a) Unless a notice of intent to appeal is filed under Subsection (14)(b), each]~~

507 (15) (a) Each party to the proceeding shall comply with the order of the records
508 committee unless the order of the records committee is appealed under Section 63-2-404.

509 ~~[(b) If a party disagrees with the order of the records committee, that party may file a~~
510 ~~notice of intent to appeal the order of the records committee.]~~

511 ~~[(c)]~~ (b) If the records committee orders ~~[the]~~ a governmental entity to produce a
512 record and no appeal is filed, or if, as a result of the appeal, the governmental entity is required
513 to produce a record, the governmental entity shall:

514 (i) produce the record; and

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

516 ~~[(d)]~~ (c) (i) If the governmental entity that is ordered to produce a record fails to file a
517 notice of compliance or a notice of intent to appeal, the records committee may do either or
518 both of the following:

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

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

521 (I) the governor for executive branch entities;

522 (II) the Legislative Management Committee for legislative branch entities; and

523 (III) the Judicial Council for judicial branch agencies entities.

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

527 Section 7. Section **63-2-404** is amended to read:

528 **63-2-404. Judicial review.**

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

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

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

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

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

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

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

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

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

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

545 ~~[(B) the chief administrative officer failed to make a determination under Section
546 63-2-401.;~~

547 ~~[(3)]~~ (2) The petition for judicial review shall be a complaint governed by the Utah
548 Rules of Civil Procedure and shall contain:

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

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

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

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

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

556 ~~[(4)]~~ (3) If the appeal is based on the denial of access to a protected record, the court
557 shall allow the claimant of business confidentiality to provide to the court the reasons for the
558 claim of business confidentiality.

559 ~~[(5)]~~ (4) All additional pleadings and proceedings in the district court are governed by
560 the Utah Rules of Civil Procedure.

561 ~~[(6)]~~ (5) The district court may review the disputed records. The review shall be in
562 camera.

563 ~~[(7)]~~ (6) The court shall:

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

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

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

568 ~~[(8)]~~ (7) (a) The court may, upon consideration and weighing of the various interests
569 and public policies pertinent to the classification and disclosure or nondisclosure, order the
570 disclosure of information properly classified as private, controlled, or protected if the interest
571 favoring access outweighs the interest favoring restriction of access.

572 (b) The court shall consider and, where appropriate, limit the requester's use and
573 further disclosure of the record in order to protect privacy interests in the case of private or
574 controlled records, business confidentiality interests in the case of records protected under
575 Subsections 63-2-304(1) ~~[and]~~, (2), (40)(a)(ii), or (40)(a)(vi) and privacy interests or the public
576 interest in the case of other protected records.

577 Section 8. Section **63-2-701** is amended to read:

578 **63-2-701. Political subdivisions may adopt ordinances in compliance with**
579 **chapter.**

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

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

585 (c) If any political subdivision does not adopt and maintain an ordinance or policy,
586 ~~[then]~~ that political subdivision is subject to this chapter.

587 (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision
588 is subject to Parts 1 and 3, and Sections 63-2-201, 63-2-202, 63-2-205, 63-2-206, 63-2-601,
589 63-2-602, 63-2-905, and 63-2-907.

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

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

595 (g) The report required by Subsection (1)(f) is notification to state archives of the
596 political subdivision's retention schedules, designations, and classifications. The report is not
597 subject to approval by state archives. If state archives determines that a different retention
598 schedule is needed for state purposes, state archives shall notify the political subdivision of the
599 state's retention schedule for the records and shall maintain the records if requested to do so
600 under Subsection 63-2-905(2).

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

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

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

607 (c) provide guidelines for establishment of fees in accordance with Section 63-2-203;
608 and

609 (d) provide standards for the management and retention of the records of the political
610 subdivision comparable to Section 63-2-903.

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

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

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

620 (b) The policy or ordinance shall provide for:

621 (i) an appeals board composed of the governing body of the political subdivision; or
622 (ii) a separate appeals board composed of members of the governing body and the
623 public, appointed by the governing body.

624 (5) ~~[If the requester concurs, the]~~ A decision of the appeals board established by the
625 political subdivision may [also provide for an additional level of administrative review to] be
626 appealed to the records committee in accordance with Section 63-2-403.

627 (6) Appeals of the decisions of the ~~[appeals boards established by political~~
628 ~~subdivisions]~~ records committee made under Subsection (5) shall be by petition for judicial
629 review to the district court. The contents of the petition for review and the conduct of the
630 proceeding shall be in accordance with ~~[Sections 63-2-402 and]~~ Section 63-2-404.

631 (7) Any political subdivision that adopts an ordinance or policy under Subsection (1)
632 shall forward to state archives a copy and summary description of the ordinance or policy.

633 Section 9. Section **63-2-802** is amended to read:

634 **63-2-802. Injunction -- Attorneys' fees.**

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

637 (2) (a) A district court may assess against any governmental entity or political
638 subdivision reasonable attorneys' fees and other litigation costs reasonably incurred in
639 connection with a judicial appeal of a denial of a records request if the requester substantially
640 prevails.

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

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

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

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

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

649 (3) Neither attorneys' fees nor costs shall be awarded for fees or costs incurred during
650 administrative proceedings.

651 (4) Notwithstanding Subsection (2), a court may only award fees and costs incurred in

652 connection with appeals to district courts under [~~Subsection~~] Section 63-2-404[(2)] if the fees
653 and costs were incurred 20 or more days after the requester provided to the governmental entity
654 or political subdivision a statement of position that adequately explains the basis for the
655 requester's position.

656 (5) Claims for attorneys' fees as provided in this section or for damages are subject to
657 Title 63, Chapter 30d, Governmental Immunity Act of Utah.

658 Section 10. **Repealer.**

659 This bill repeals:

660 Section **63-2-402, Option for appealing a denial.**

Legislative Review Note
as of 11-9-05 8:26 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

1 **ACCESS AND FEE AMENDMENTS TO**
2 **GOVERNMENT RECORDS ACCESS AND**
3 **MANAGEMENT ACT**
4 2006 GENERAL SESSION
5 STATE OF UTAH

6
7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Government Records Access and Management Act by amending
10 certain provisions related to protected records, manipulation of records, and fees for
11 access of certain records.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ provides that an individual's home address, home telephone number, or personal
15 mobile phone number is a protected record, if:
- 16 • the information is required to be provided in order to comply with a law; and
 - 17 • by complying with the law and due to the nature of the law the subject of the
18 record has a reasonable expectation that this information will be protected;
- 19 ▶ allows the disclosure of an individual's home address or phone numbers that are
20 otherwise protected if:
- 21 • the head of the governmental entity determines that the disclosure is mutually
22 beneficial to the subject of the record, the governmental entity, and to the public
23 by serving a public purpose related to public safety or consumer protection; and
 - 24 • the person who receives the record from the governmental entity agrees not to
25 use or allow its use for advertising or solicitation purposes;
- 26 ▶ provides that in response to a request, a governmental entity is not required to:
- 27 • compile, format, manipulate, package, summarize, or tailor information;
 - 28 • provide a record in a particular format, medium, or program; or
 - 29 • fulfill a person's records request if the information requested is included in a
30 publication or product of a governmental entity;
- 31 ▶ allows rather than requires a governmental entity to provide a record in a particular

32 form if the governmental entity determines it is able to do so without unreasonably
 33 interfering with its duties;

- 34 ▶ allows a governmental entity to charge additional fees above the actual costs as
 35 determined by governmental entity's executive officer, for requests from
 36 nongovernmental entities for a series of records if the records are provided in an
 37 electronic spreadsheet format, in an electronic database format, or for the purpose
 38 resale of the records;
- 39 ▶ requires additional fees to be reasonable and prohibits additional fees to be designed
 40 to compete with a private business that provide substantially similar services;
- 41 ▶ allows contractors and private providers to receive private, controlled, or protected
 42 records under certain circumstances;
- 43 ▶ provides that improper use of a record is a class B misdemeanor; and
- 44 ▶ makes technical changes.

45 **Monies Appropriated in this Bill:**

46 None

47 **Other Special Clauses:**

48 None

49 **Utah Code Sections Affected:**

50 AMENDS:

51 **63-2-201**, as last amended by Chapter 40, Laws of Utah 2005

52 **63-2-203**, as last amended by Chapter 40, Laws of Utah 2005

53 **63-2-206**, as last amended by Chapter 63, Laws of Utah 2002

54 **63-2-304**, as last amended by Chapters 2, 131, 201, 214, 256 and 297, Laws of Utah
 55 2005

56 **63-2-801**, as last amended by Chapter 280, Laws of Utah 1992

57

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

59 Section 1. Section **63-2-201** is amended to read:

60 **63-2-201. Right to inspect records and receive copies of records.**

61 (1) Every person has the right to inspect a public record free of charge, and the right to
 62 take a copy of a public record during normal working hours, subject to Sections 63-2-203 and

63 63-2-204.

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

65 (3) The following records are not public:

66 (a) a record that is private, controlled, or protected under Sections 63-2-302,
67 63-2-302.5, 63-2-303, and 63-2-304; and

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

72 (4) Only a record specified in Section 63-2-302, 63-2-302.5, 63-2-303, or 63-2-304
73 may be classified private, controlled, or protected.

74 (5) (a) A governmental entity may not disclose a record that is private, controlled, or
75 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section
76 63-2-202, 63-2-206, or 63-2-302.5.

77 (b) A governmental entity may disclose a record that is private under Subsection
78 63-2-302(2) or protected under Section 63-2-304 to persons other than those specified in
79 Section 63-2-202 or 63-2-206 if the head of a governmental entity, or a designee, determines
80 that:

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

82 (ii) the interests favoring access outweighs the interest favoring restriction of access.

83 (c) In addition to the disclosure under Subsection (5)(b), a governmental entity may
84 disclose a record that is protected under Subsection 63-2-304(51) if:

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

86 (A) is mutually beneficial to:

87 (I) the subject of the record;

88 (II) the governmental entity; and

89 (III) the public; and

90 (B) serves a public purpose related to:

91 (I) public safety; or

92 (II) consumer protection; and

93 (ii) the person who receives the record from the governmental entity agrees not to use

94 or allow the use of the record for advertising or solicitation purposes.

95 (6) (a) The disclosure of a record to which access is governed or limited pursuant to
96 court rule, another state statute, federal statute, or federal regulation, including a record for
97 which access is governed or limited as a condition of participation in a state or federal program
98 or for receiving state or federal funds, is governed by the specific provisions of that statute,
99 rule, or regulation.

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

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

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

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

105 (c) the person pays the lawful fees.

106 (8) (a) ~~[A] In response to a request, a governmental entity is not required to:~~

107 ~~(i) create a record [in response to a request.];~~

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

109 ~~(iii) provide a record in a particular format, medium, or program; or~~

110 ~~(iv) fulfill a person's records request if:~~

111 ~~(A) the request unreasonably duplicates prior records requests from that person; or~~

112 ~~(B) the information requested is included in a public publication or product produced~~
113 ~~by a governmental entity.~~

114 (b) Upon request, a governmental entity ~~[shall]~~ may provide a record in a particular
115 ~~[format] form~~ under Subsection (8)(a)(ii) or (iii) if:

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

118 (ii) the requester agrees to pay the governmental entity for ~~[its costs incurred in]~~
119 providing the record in the requested ~~[format] form~~ in accordance with Section 63-2-203.

120 ~~[(c) Nothing in this section requires a governmental entity to fulfill a person's records~~
121 ~~request if the request unreasonably duplicates prior records requests from that person.]~~

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

124 (i) the records are contained in files that do not contain records that are exempt from

125 disclosure, or the records may be segregated to remove private, protected, or controlled
126 information from disclosure; and

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

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

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

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

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

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

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

145 (12) A governmental entity may provide access to an electronic copy of a record in lieu
146 of providing access to its paper equivalent.

147 Section 2. Section **63-2-203** is amended to read:

148 **63-2-203. Fees.**

149 (1) A governmental entity may charge a reasonable fee to cover the governmental
150 entity's actual cost of [~~duplicating~~] providing a record. This fee shall be approved by the
151 governmental entity's executive officer.

152 (2) (a) When a governmental entity compiles a record in a form other than that
153 normally maintained by the governmental entity, the actual costs under this section may include
154 the following:

155 (i) the cost of staff time for [~~summarizing~~] compiling, formatting, manipulating,

156 packaging, summarizing, or tailoring the record either into an organization or media to meet
157 the person's request;

158 (ii) the cost of staff time for search, retrieval, and other direct administrative costs for
159 complying with a request; and

160 (iii) in the case of fees for a record that is the result of computer output other than word
161 processing, the actual incremental cost of providing the electronic services and products
162 together with a reasonable portion of the costs associated with formatting or interfacing the
163 information for particular users, and the administrative costs as set forth in Subsections
164 (2)(a)(i) and (ii).

165 (b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest
166 paid employee who, in the discretion of the custodian of records, has the necessary skill and
167 training to perform the request.

168 (c) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first
169 quarter hour of staff time.

170 (d) (i) In addition to the charges made under Subsection (2)(a), a governmental entity
171 that provides to a requestor a series of records may charge additional fees determined by
172 governmental entity's executive officer if the records are provided:

173 (A) in an electronic spreadsheet format;

174 (B) in an electronic database format; or

175 (C) for the purpose of re-sale of the records.

176 (ii) The additional fees under this section:

177 (A) shall be reasonable;

178 (B) may include charges above the actual costs to fill the request;

179 (C) are exempt from the limitations provided under Subsections (2)(b) and (c); and

180 (D) may not be designed to compete with private business that provide substantially
181 similar information.

182 (iii) This Subsection (2)(d) does not apply if:

183 (A) the requestor of records is a governmental entity; and

184 (B) the records are used for the benefit of the public.

185 (3) (a) Fees shall be established as provided in this Subsection (3).

186 (b) A governmental entity with fees established by the Legislature:

187 (i) shall establish the fees defined in Subsection (2), or other actual costs associated
188 with this section through the budget process; and

189 (ii) may use the procedures of Section 63-38-3.2 to set fees until the Legislature
190 establishes fees through the budget process.

191 (c) Political subdivisions shall establish fees by ordinance or written formal policy
192 adopted by the governing body.

193 (d) The judiciary shall establish fees by rules of the judicial council.

194 (4) A governmental entity may fulfill a record request without charge and is
195 encouraged to do so when it determines that:

196 (a) releasing the record primarily benefits the public rather than a person;

197 (b) the individual requesting the record is the subject of the record, or an individual
198 specified in Subsection 63-2-202(1) or (2); or

199 (c) the requester's legal rights are directly implicated by the information in the record,
200 and the requester is impecunious.

201 (5) A governmental entity may not charge a fee for:

202 (a) reviewing a record to determine whether it is subject to disclosure, except as
203 permitted by Subsection (2)(a)(ii); or

204 (b) inspecting a record.

205 (6) (a) A person who believes that there has been an unreasonable denial of a fee
206 waiver under Subsection (4) may appeal the denial in the same manner as a person appeals
207 when inspection of a public record is denied under Section 63-2-205.

208 (b) The adjudicative body hearing the appeal has the same authority when a fee waiver
209 or reduction is denied as it has when the inspection of a public record is denied.

210 (7) (a) All fees received under this section by a governmental entity subject to
211 Subsection (3)(b) shall be retained by the governmental entity as a dedicated credit.

212 (b) Those funds shall be used to recover the actual cost and expenses incurred by the
213 governmental entity in providing the requested record or record series.

214 (8) (a) A governmental entity may require payment of past fees and future estimated
215 fees before beginning to process a request if:

216 (i) fees are expected to exceed \$50; or

217 (ii) the requester has not paid fees from previous requests.

218 (b) Any prepaid amount in excess of fees due shall be returned to the requester.

219 (9) This section does not alter, repeal, or reduce fees established by other statutes or
220 legislative acts.

221 (10) (a) Notwithstanding Subsection (3)(c), fees for voter registration records shall be
222 set as provided in this Subsection (10).

223 (b) The lieutenant governor shall:

224 (i) after consultation with county clerks, establish uniform fees for voter registration
225 and voter history records that meet the requirements of this section; and

226 (ii) obtain legislative approval of those fees by following the procedures and
227 requirements of Section 63-38-3.2.

228 Section 3. Section **63-2-206** is amended to read:

229 **63-2-206. Sharing records.**

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

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

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

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

239 (d) is one that collects information for presentence, probationary, or parole purposes.

240 (2) (a) A governmental entity may provide a private ~~[or]~~, controlled, or protected
241 record or record series to another governmental entity, a political subdivision, a
242 government-managed corporation, the federal government, or another state if the requesting
243 entity provides written assurance:

244 ~~[(a)]~~ (i) that the record or record series is necessary to the performance of the
245 governmental entity's duties and functions;

246 ~~[(b)]~~ (ii) that the record or record series will be used for a purpose similar to the
247 purpose for which the information in the record or record series was collected or obtained; and

248 ~~[(c)]~~ (iii) that the use of the record or record series produces a public benefit that

249 outweighs the individual privacy right that protects the record or record series.

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

253 ~~[(3) A governmental entity may provide a record or record series that is protected under~~
254 ~~Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a~~
255 ~~government-managed corporation, the federal government, or another state if:]~~

256 ~~[(a) the record is necessary to the performance of the requesting entity's duties and~~
257 ~~functions; or]~~

258 ~~[(b) the record will be used for a purpose similar to the purpose for which the~~
259 ~~information in the record or record series was collected or obtained.]~~

260 ~~[(4)]~~ (3) (a) A governmental entity shall provide a private, controlled, or protected
261 record to another governmental entity, a political subdivision, a government-managed
262 corporation, the federal government, or another state if the requesting entity:

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

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

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

267 (b) Subsection ~~[(4)]~~ (3)(a)(iii) applies only if the record is a record described in
268 Subsection 63-2-304(4).

269 ~~[(5)]~~ (4) Before disclosing a record or record series under this section to another
270 governmental entity, another state, the United States, ~~[or]~~ a foreign government, or to a
271 contractor or private provider, the originating governmental entity shall:

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

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

278 ~~[(6)]~~ (5) A governmental entity may disclose a record to another state, the United
279 States, or a foreign government for the reasons listed in Subsections (1)~~;~~ and (2)~~;~~ ~~and~~ (3)]

280 without complying with the procedures of Subsection (2) or ~~[(5)]~~ (4) if disclosure is authorized
281 by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

282 ~~[(7)]~~ (6) (a) Subject to ~~[Subsection (7)]~~ Subsections (6)(b) and (c), ~~[a governmental]~~ an
283 entity receiving a record under this section is subject to the same restrictions on disclosure of
284 the record as the originating entity.

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

287 (i) the contractor or private provider's use of the record or record series produces a
288 public benefit that outweighs the individual privacy right that protects the record or record
289 series;

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

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

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

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

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

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

298 ~~[(b)]~~ (c) The classification of a record already held by a governmental entity and the
299 applicable restrictions on disclosure of that record are not affected by the governmental entity's
300 receipt under this section of a record with a different classification that contains information
301 that is also included in the previously held record.

302 (8) Notwithstanding any other provision of this section, if a more specific court rule or
303 order, state statute, federal statute, or federal regulation prohibits or requires sharing
304 information, that rule, order, statute, or federal regulation controls.

305 (9) The following records may not be shared under this section:

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

309 (b) records of publicly funded libraries as described in Subsection 63-2-302(1)(c).

310 (10) Records that may evidence or relate to a violation of law may be disclosed to a

311 government prosecutor, peace officer, or auditor.

312 Section 4. Section **63-2-304** is amended to read:

313 **63-2-304. Protected records.**

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

315 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
316 has provided the governmental entity with the information specified in Section 63-2-308;

317 (2) commercial information or nonindividual financial information obtained from a
318 person if:

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

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

324 (c) the person submitting the information has provided the governmental entity with
325 the information specified in Section 63-2-308;

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

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

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

335 (6) records the disclosure of which would impair governmental procurement
336 proceedings or give an unfair advantage to any person proposing to enter into a contract or
337 agreement with a governmental entity, except that this Subsection (6) does not restrict the right
338 of a person to see bids submitted to or by a governmental entity after bidding has closed;

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

342 (a) public interest in obtaining access to the information outweighs the governmental
343 entity's need to acquire the property on the best terms possible;

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

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

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

351 (e) the property under consideration for public acquisition is a single family residence
352 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
353 the property as required under Section 78-34-4.5;

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

358 (a) the public interest in access outweighs the interests in restricting access, including
359 the governmental entity's interest in maximizing the financial benefit of the transaction; or

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

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

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

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

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

372 (d) reasonably could be expected to disclose the identity of a source who is not

373 generally known outside of government and, in the case of a record compiled in the course of
374 an investigation, disclose information furnished by a source not generally known outside of
375 government if disclosure would compromise the source; or

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

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

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

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

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

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

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

397 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
398 litigation that are not available under the rules of discovery;

399 (17) records disclosing an attorney's work product, including the mental impressions or
400 legal theories of an attorney or other representative of a governmental entity concerning
401 litigation;

402 (18) records of communications between a governmental entity and an attorney
403 representing, retained, or employed by the governmental entity if the communications would be

404 privileged as provided in Section 78-24-8;

405 (19) personal files of a legislator, including personal correspondence to or from a
406 member of the Legislature, provided that correspondence that gives notice of legislative action
407 or policy may not be classified as protected under this section;

408 (20) (a) records in the custody or control of the Office of Legislative Research and
409 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
410 legislation or contemplated course of action before the legislator has elected to support the
411 legislation or course of action, or made the legislation or course of action public; and

412 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
413 Office of Legislative Research and General Counsel is a public document unless a legislator
414 asks that the records requesting the legislation be maintained as protected records until such
415 time as the legislator elects to make the legislation or course of action public;

416 (21) research requests from legislators to the Office of Legislative Research and
417 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
418 in response to these requests;

419 (22) drafts, unless otherwise classified as public;

420 (23) records concerning a governmental entity's strategy about collective bargaining or
421 pending litigation;

422 (24) records of investigations of loss occurrences and analyses of loss occurrences that
423 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
424 Uninsured Employers' Fund, or similar divisions in other governmental entities;

425 (25) records, other than personnel evaluations, that contain a personal recommendation
426 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
427 personal privacy, or disclosure is not in the public interest;

428 (26) records that reveal the location of historic, prehistoric, paleontological, or
429 biological resources that if known would jeopardize the security of those resources or of
430 valuable historic, scientific, educational, or cultural information;

431 (27) records of independent state agencies if the disclosure of the records would
432 conflict with the fiduciary obligations of the agency;

433 (28) records of an institution within the state system of higher education defined in
434 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,

435 retention decisions, and promotions, which could be properly discussed in a meeting closed in
436 accordance with Title 52, Chapter 4, Open and Public Meetings, provided that records of the
437 final decisions about tenure, appointments, retention, promotions, or those students admitted,
438 may not be classified as protected under this section;

439 (29) records of the governor's office, including budget recommendations, legislative
440 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
441 policies or contemplated courses of action before the governor has implemented or rejected
442 those policies or courses of action or made them public;

443 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
444 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
445 recommendations in these areas;

446 (31) records provided by the United States or by a government entity outside the state
447 that are given to the governmental entity with a requirement that they be managed as protected
448 records if the providing entity certifies that the record would not be subject to public disclosure
449 if retained by it;

450 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
451 except as provided in Section 52-4-7;

452 (33) records that would reveal the contents of settlement negotiations but not including
453 final settlements or empirical data to the extent that they are not otherwise exempt from
454 disclosure;

455 (34) memoranda prepared by staff and used in the decision-making process by an
456 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
457 other body charged by law with performing a quasi-judicial function;

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

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

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

470 (a) the donor requests anonymity in writing;

471 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
472 classified protected by the governmental entity under this Subsection (37); and

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

478 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
479 73-18-13;

480 (39) a notification of workers' compensation insurance coverage described in Section
481 34A-2-205;

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

485 (i) unpublished lecture notes;

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

487 (A) relating to research; and

488 (B) of:

489 (I) the institution within the state system of higher education defined in Section
490 53B-1-102; or

491 (II) a sponsor of sponsored research;

492 (iii) unpublished manuscripts;

493 (iv) creative works in process;

494 (v) scholarly correspondence; and

495 (vi) confidential information contained in research proposals;

496 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public

497 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
498 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
499 (41) (a) records in the custody or control of the Office of Legislative Auditor General
500 that would reveal the name of a particular legislator who requests a legislative audit prior to the
501 date that audit is completed and made public; and
502 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
503 Office of the Legislative Auditor General is a public document unless the legislator asks that
504 the records in the custody or control of the Office of Legislative Auditor General that would
505 reveal the name of a particular legislator who requests a legislative audit be maintained as
506 protected records until the audit is completed and made public;
507 (42) records that provide detail as to the location of an explosive, including a map or
508 other document that indicates the location of:
509 (a) a production facility; or
510 (b) a magazine;
511 (43) information contained in the database described in Section 62A-3-311.1;
512 (44) information contained in the Management Information System and Licensing
513 Information System described in Title 62A, Chapter 4a, Child and Family Services;
514 (45) information regarding National Guard operations or activities in support of the
515 National Guard's federal mission;
516 (46) records provided by any pawnbroker or pawnshop to a law enforcement agency or
517 to the central database in compliance with Title 13, Chapter 32a, Pawnshop Transaction
518 Information Act;
519 (47) information regarding food security, risk, and vulnerability assessments performed
520 by the Department of Agriculture and Food;
521 (48) except to the extent that the record is exempt from this chapter pursuant to Section
522 63-2-106, records related to an emergency plan or program prepared or maintained by the
523 Division of Emergency Services and Homeland Security the disclosure of which would
524 jeopardize:
525 (a) the safety of the general public; or
526 (b) the security of:
527 (i) governmental property;

528 (ii) governmental programs; or

529 (iii) the property of a private person who provides the Division of Emergency Services
530 and Homeland Security information;

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

536 (50) as provided in Section 26-39-109:

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

540 (b) information or records related to a complaint received by the Department of Health
541 from an anonymous complainant regarding a child care program or residential child care[-]; and

542 (51) an individual's home address, home telephone number, or personal mobile phone
543 number, if:

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

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

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

549 (ii) the individual complying with the laws ordinance, rule, or order.

550 Section 5. Section **63-2-801** is amended to read:

551 **63-2-801. Criminal penalties.**

552 (1) (a) A public employee or other person who has lawful access to any private,
553 controlled, or protected record under this chapter, and who intentionally discloses [~~or~~],
554 provides a copy of, or improperly uses a private, controlled, or protected record [~~to any person~~]
555 knowing that [~~such~~] the disclosure or use is prohibited under this chapter, is guilty of a class B
556 misdemeanor.

557 (b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released
558 private, controlled, or protected information in the reasonable belief that the use or disclosure

559 of the information was necessary to expose a violation of law involving government
560 corruption, abuse of office, or misappropriation of public funds or property.

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

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

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

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

(Appendix One)

Assigned GRAMA Issues

H.B. 75 "Government Records Access and Management Task Force," 2005 General Session

The Task Force shall review and make recommendations on the following issues:

- Should a governmental entity be required to manipulate electronic data to provide a compilation, summary, or other record not maintained by the governmental entity?
- Should a governmental entity be required to disclose a compilation or summary of records that the governmental entity:
 - produces as a product; and
 - routinely offers for sale or license?
- When, if ever, may a governmental entity charge fair market value for providing a record?
 - If market based fees are permitted, how should fees be set?
- When, if ever, may a governmental entity disclose private records to a private entity under a contract that ensures the confidentiality of the private records?
- Should the following be classified as a private record?:
 - information that would disclose both an individual's name and that individual's:
 - home address;
 - home telephone number;
 - birth date;
 - Social Security number; or
 - marital status
 - a record concerning an individual that discloses personal status information such as race, religion, or disabilities?
- Are any changes needed to address technologies, including providing for access to electronic information?
- Are changes needed to protect privacy rights related to the judiciary?
- Are changes needed to protect privacy rights related to law enforcement?
- Are changes needed to deter nuisance filings?
- Are changes needed to address the sharing of information or data related to a parcel of real property between the state and local governments?
- Are there any other issues that should be addressed by the Task Force?

(Appendix Two)

2005 Agenda Index
GRAMA Task Force

- May 17
- **Introduction to the Government Records Access and Management Act (GRAMA)**
 - **History of Legislative Changes to GRAMA**
 - **Identification of Key GRAMA Task Force Issues**
- June 14
- **Technology Advances in Communication and the Government Records Access and Management Act (GRAMA)**
- July 19
- **Government Data Compilations, Fees Above Costs for Data, and Privacy Rights for Data for Commercial and Noncommercial Purposes**
- August—No Meeting
- September 20
- **Government Data Compilations, Fees Above Costs for Data, and Privacy Rights for Data for Commercial and Noncommercial Purposes**
 - **Amendments to Government Records Access and Management Act (Draft legislation)**
- October 18
- **Amendments to Government Records Access and Management Act (Draft legislation)**
 - **Government Records Access and Management Act Records Committee and Appeals Process (Draft legislation)**
 - **Access and Fee Amendments to Government Records Access and Management Act (Draft legislation)**
 - **Additional Proposed Amendments to the Government Records Access Management Act**
- November 8
- **Consideration of Proposed Changes to the Government Records Access and Management Act (GRAMA) (Draft legislation)**
 - **"Amendments to Government Records Access and Management Act" (*bill one*)**
 - **"GRAMA Appeals Process and Document Request Amendments" (*bill two*)**
 - **"Access and Fee Amendments to Government Records Access and Management Act" (*bill three*)**

(Appendix Three)

Government Records Access and Management Act (GRAMA)

Overview of Title 63, Chapter 2, Utah Code Annotated



Prepared by the Office of Legislative Research and General Counsel – March 2005

Government Records Access and Management Act (GRAMA)

Parts of Title 63, Chapter 2, Utah Code Annotated

- **Part 1 General Provisions**
- **Part 2 Access to Records**
- **Part 3 Classification**
- **Part 4 Appeals**
- **Part 5 State Records Committee**
- **Part 6 Accuracy of Records**
- **Part 7 Applicability to Political Subdivisions,
the Judiciary, and the Legislature**
- **Part 8 Remedies**
- **Part 9 Archives and Records Service**
- **Part 10 Public Associations**



Prepared by the Office of Legislative Research and General Counsel – March 2005

Legislative Intent of GRAMA

- **The Legislature recognizes:**
 - ★ **“The public's right of access to information concerning the conduct of the public's business”**
 - ★ **“The right of privacy in relation to personal data gathered by governmental entities”**
 - ★ **“A public policy interest in allowing government to restrict access to certain records for the public good”**

Source: Utah Code Ann. § 63-2-102

Prepared by the Office of Legislative Research and General Counsel – March 2005

Legislative Intent of GRAMA – continued

- **The intent of the Legislature is to:**
 - ★ **Promote the public's right of easy and reasonable access;**
 - ★ **Specify conditions when access restrictions may outweigh the public's interest in access;**
 - ★ **Prevent abuse of confidentiality by governmental entities by specifying its use;**
 - ★ **Provide guidelines for both:**
 - **Disclosure of government records; and**
 - **Restrictions on access to government records;**
 - ★ **Favor public access when in doubt; and**
 - ★ **Establish fair and reasonable records management practices.**

Source: Utah Code Ann. § 63-2-102

Prepared by the Office of Legislative Research and General Counsel – March 2005

Does GRAMA apply?



- **Record of a government entity**
 - ★ **Government entity defined by statute**
- **Limited application for certain entities**
(must substantially comply)
 - ★ **Legislature**
 - ★ **Judiciary**
 - ★ **Political subdivisions**
 - **May adopt own ordinance**

Source: Utah Code Title 63, Chapter 2, GRAMA

Prepared by the Office of Legislative Research and General Counsel – March 2005

What is a record?

- **“Record” means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics that is:**
 - ★ **prepared, owned, received, or retained by government; and**
 - ★ **reproducible by mechanical/electronic means.**

Source: Utah Code Ann. § 63-2-103

Prepared by the Office of Legislative Research and General Counsel – March 2005

What is a record? – continued

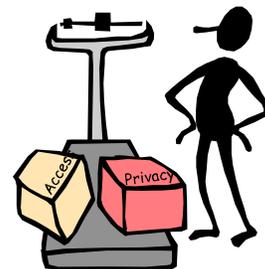
- **“Record” does not mean:**
 - ★ certain temporary drafts;
 - ★ materials legally owned in an individual’s private capacity;
 - ★ certain copyrighted or patented material;
 - ★ proprietary software;
 - ★ junk mail/commercial publications;
 - ★ materials contained in public libraries;
 - ★ daily calendars and other personal notes;
 - ★ computer programs; or
 - ★ notes or internal memoranda prepared as part of a deliberative process for judicial or quasi-judicial functions.

Source: Utah Code Ann. § 63-2-103

Prepared by the Office of Legislative Research and General Counsel – March 2005

Four Record Classifications

- **Public**
- **Private**
- **Controlled**
- **Protected**



Other laws
may also
restrict access



Source: Utah Code Ann. §§ 63-2-103, 63-2-201, 63-2-202

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Four Record Classifications – continued

- **“Public record”** – a record that is not private, controlled, or protected and that is not exempt from disclosure by court rule or state or federal law, etc.
- **“Private record”** – a record with data on individuals e.g. – eligibility for unemployment, social services, or welfare benefits; medical history; employment records disclosing a home address, home phone number, or Social Security number, etc (certain exceptions apply).
- **“Controlled record”** – a properly classified record with data on individuals that contains medical or psychological data the release of which would be:
 - ★ detrimental to the subject of the record’s mental health or to the safety of any individual; or
 - ★ a violation of normal professional practice and medical ethics.
- **“Protected record”** – a properly classified record that may include trade secrets, information that may result in an unfair competitive injury or a competitive advantage if disclosed, information that if disclosed would jeopardize life, safety, or security, etc.

Source: Utah Code Ann. §§ 63-2-103, 63-2-302, 63-2-303, and 63-2-304

Prepared by the Office of Legislative Research and General Counsel – March 2005

Disclosure of a Record by Classification

- **Public** – Every person has right to inspect a public record free of charge and take a copy during normal working hours subject to certain fees and certain request requirements (time periods).
- **Private** – The subject of the record, parent, legal guardian, a person with power of attorney, or a person authorized by the subject of the record or by a court may obtain a private record.
- **Controlled** – A physician, psychologist, certified social worker, insurance provider, or government health agency may obtain a controlled record with a release from the subject of the record or by a court order.
- **Protected** – The person who submitted the record, a person with power of attorney or notarized release from all persons with an interest in the protection, or a person authorized by a court order may obtain a protected record.

Source: Utah Code Ann. §§ 63-2-201, 63-2-202

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Fees for Disclosure of a Record

- **A governmental entity may charge a reasonable fee to cover the actual cost of duplicating a record.**
- **If the record must be compiled in form not normally maintained by the governmental entity, actual cost may include:**
 - ★ **Staff time for compiling the record to meet the request (no charge for the first 15 minutes and not more than the lowest salary paid to an employee qualified to perform the request); and**
 - ★ **The actual incremental cost of providing electronic services and formatting for the requestor.**
- **No charge is encouraged when:**
 - ★ **Release of the record primarily benefits the public;**
 - ★ **The requestor is the subject of the record; or**
 - ★ **The requestor's legal rights are implicated and the requestor is poor.**
- **No charge is allowed when:**
 - ★ **Reviewing a record to determine whether it is subject to disclosure; or**
 - ★ **Inspecting a record.**

Source: Utah Code Ann. § 63-2-203

Prepared by the Office of Legislative Research and General Counsel – March 2005

Format of a Record

Compiled Information



- **A governmental entity:**
 - ★ **Is not required to:**
 - **create a record in response to a request**
 - **fulfill a request if it unreasonably duplicates prior records requested from the same person**
 - ★ **Shall provide the record in a particular format if:**
 - **the governmental entity is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and**
 - **the requester agrees to pay for the governmental entity's costs in providing the record in the requested format**

Source: Utah Code Ann. § 63-2-201

Prepared by the Office of Legislative Research and General Counsel – March 2005

Format of a Record

Compiled Information Related issues



- **Physical form in which a record is stored may not limit inspection/copying**
- **If request is for copies of more than 50 pages contained in files the entity may require the requester to make the copies**
- **Some protection of government owned intellectual property rights**
- **Segregating information**

Source: Utah Code Ann. § 63-2-201

Prepared by the Office of Legislative Research and General Counsel – March 2005

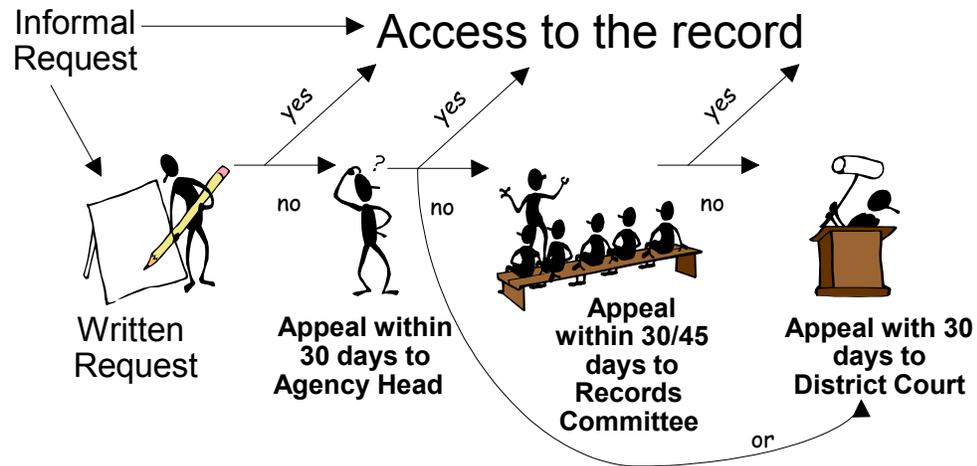
Request for a Record

- **The person making the request shall furnish a written request which includes:**
 - ★ **The requester's name, mailing address, and daytime phone number;**
 - ★ **A description of the records with reasonable specificity.**
- **A government entity must specify where and to whom the request is to be directed**
- **A government entity shall respond to the request as soon as reasonably possible:**
 - ★ **No later than**
 - **10 business days after receipt of the request; or**
 - **5 business days if the requester shows that an expedited response benefits the public (as for a story for publication or broadcast to the general public)**
 - ★ **By approving the request and providing the record;**
 - ★ **Denying the request; or**
 - ★ **Notifying the requester that:**
 - **The government entity does not maintain the record (and, if known, who does); or**
 - **Extraordinary circumstances exist that cause additional delay in approving or denying the request (i.e. record is in use, record is part of an audit, request is voluminous, large number of requests are being precessed, etc.)**

Source: Utah Code Ann. § 63-2-204

Prepared by the Office of Legislative Research and General Counsel – March 2005

Access and Appeals Process



A political subdivision's appeal process may differ if the political subdivision has adopted its own ordinance.
Source: Utah Code Ann. § 63-2-401, 63-2-402, 63-2-403, and 63-2-404
Prepared by the Office of Legislative Research and General Counsel – March 2005

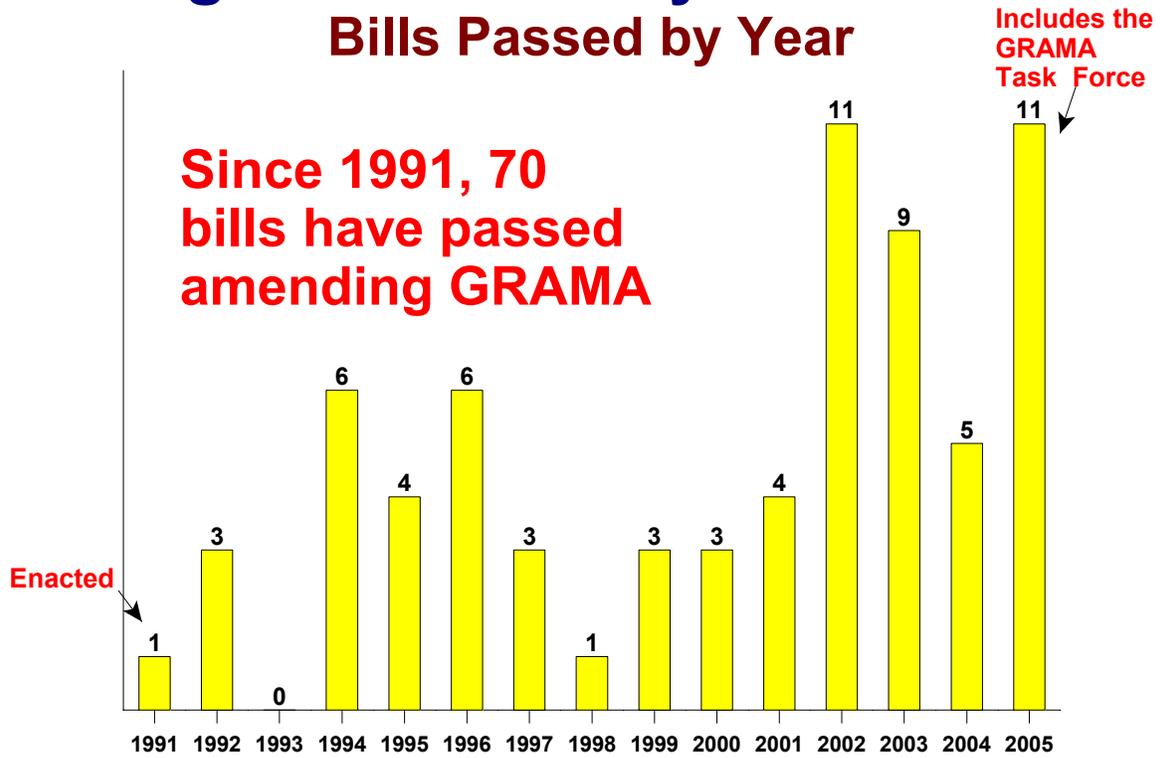
State Records Committee

- **Seven members**
 - ★ Individual from the private sector who manages records that would be private or controlled if created by a governmental entity
 - ★ State Auditor or designee
 - ★ Director of the Division of State History or designee
 - ★ The governor or designee
 - ★ Citizen member
 - ★ Elected official representing political subdivisions
 - ★ Individual representing the news media
- **Appointed by the governor with the consent of the Senate for four year terms (excluding specified members)**
- **Duties:**
 - ★ Shall review and approve retention and disposal of records
 - ★ Shall hear appeals from determinations of access
 - ★ May order reassignment of classification and designation for any record series by a governmental entity if inconsistent with this chapter
- **Division of Archives and Records Service shall provide staffing for the committee**

Source: Utah Code Ann. § 63-2-501 and 63-2-502
Prepared by the Office of Legislative Research and General Counsel – March 2005

Legislative History of GRAMA

Bills Passed by Year



Prepared by the Office of Legislative Research and General Counsel – November 2005

