

Part 3 Restricted Records

53B-16-301 Definitions.

As used in this part:

- (1) "Person" means:
 - (a) a federal, state, or local governmental entity:
 - (i) that sponsors sponsored research; or
 - (ii) participates in a technology transfer;
 - (b) an individual;
 - (c) a nonprofit or profit corporation;
 - (d) a partnership;
 - (e) a sole proprietorship; or
 - (f) other type of business organization.
- (2) "Public institution of higher education" means an institution within the state system of higher education defined in Section 53B-1-102.
- (3) "Restricted record" means a record that is restricted as provided by Section 53B-16-303.
- (4) "Sponsored research" refers to research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget:
 - (a) conducted by a public institution of higher education through an office responsible for sponsored projects or programs; and
 - (b) funded or otherwise supported by an external person that is not created or controlled by the public institution of higher education.
- (5) "Technology transfer" refers to transferring information, commercializing research, or providing technical assistance between a public institution of higher education and external persons for the purpose of economic development.

Amended by Chapter 201, 2005 General Session

53B-16-302 Records that may be classified as restricted.

A public institution of higher education may classify only the following records as restricted:

- (1) that portion of a technology transfer record or sponsored research record to which access must be restricted for the purpose of securing and maintaining proprietary protection of intellectual property rights, including but not limited to patents, copyrights, trademarks, and trade secrets;
or
- (2) that portion of a technology transfer record or sponsored research record to which access is restricted for competitive or proprietary purposes, as a condition of actual or potential participation in a sponsored research or technology transfer agreement; provided, however, that upon receipt of a written request for a reasonably identifiable record, the public institution of higher education shall disclose:
 - (a) prior to a memorandum of intent to contract or an agreement in principle between the parties:
 - (i) the names of the parties, or, if the disclosure of names would cause competitive harm, a general description of the type of parties negotiating the technology transfer or sponsored research agreement; and
 - (ii) a general description of the nature of the technology transfer or sponsored research under consideration, excluding proprietary or competitive information; or
 - (b) after a memorandum of intent to contract or an agreement in principle between the parties:

- (i) the names of the parties involved in the technology transfer or sponsored research;
- (ii) a general description of the nature of the technology transfer or sponsored research to be conducted, excluding proprietary or competitive information; and
- (iii) records of the technology transfer or sponsored research to be conducted, excluding those portions of records to which access is limited under this part or Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 382, 2008 General Session

53B-16-303 Access to restricted records.

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

- (1) written consent of the public institution of higher education originating, receiving, or maintaining such records; or
- (2) a finding by the State Records Committee or a court that the record has not been properly classified as restricted under Section 63G-2-302, provided that the review of a restricted classification of a record shall not include considerations of weighing public and private interests regarding access to a properly classified record as contained in Subsection 63G-2-403(11)(b) or 63G-2-404(7) or Section 63G-2-309. Nothing in this Subsection (2) shall be construed to limit the authority of the State Board of Regents to reclassify and disclose a record of a public institution of higher education.

Amended by Chapter 382, 2008 General Session

53B-16-304 Business confidentiality claims.

- (1)
 - (a) Any person who provides to a public institution of higher education a record that the person believes should be protected under a provision listed in Subsection 63G-2-309(1)(b)(i), restricted under Section 53B-16-302, or both protected under a provision listed in Subsection 63G-2-309(1)(b)(i) and restricted under Section 53B-16-302, shall provide the public institution of higher education:
 - (i) a written claim of business confidentiality; and
 - (ii) a concise statement of reasons supporting the claim of business confidentiality.
 - (b) The person described in Subsection (1)(a) shall make the filing at the commencement of:
 - (i) the sponsored research project; or
 - (ii) the technology transfer process.
 - (c) A claim of business confidentiality submitted under this Subsection (1) shall cover all protected and restricted records exchanged during the:
 - (i) sponsored research project; or
 - (ii) technology transfer process.
- (2) The inadvertent failure to make a legally adequate claim of business confidentiality at the time required by Subsection (1) does not prejudice the claimant's right to make a legally adequate claim at a different time before disclosure of the record.

Amended by Chapter 382, 2008 General Session

53B-16-305 Applicability of the Government Records Access and Management Act.

Except as otherwise provided by this part, the provisions of Title 63G, Chapter 2, Government Records Access and Management Act, will apply to restricted technology transfer or sponsored research records as defined in this part, as if the records were protected records as defined by Title 63G, Chapter 2, Government Records Access and Management Act.

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