

**PRIVATE RECORDS UNDER GOVERNMENT
RECORDS ACCESS AND MANAGEMENT ACT**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Cindy Beshear

This act modifies the Government Records Access and Management Act (GRAMA).

GRAMA currently requires that certain information about a government employee be classified "private." This act authorizes government employees to give written notice of their status as government employees to other governmental entities in order to ensure that those entities classify personal information about government employees as "private." This act corrects cross-references contained in other sections of statute.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

26-1-17.5, as last amended by Chapter 312, Laws of Utah 1994

31A-23-202, as last amended by Chapter 232, Laws of Utah 1997

31A-26-202, as last amended by Chapter 232, Laws of Utah 1997

58-1-301, as last amended by Chapter 232, Laws of Utah 1997

61-1-4, as last amended by Chapters 160 and 232, Laws of Utah 1997

61-2-6, as last amended by Chapter 232, Laws of Utah 1997

63-2-202, as last amended by Chapter 312, Laws of Utah 1994

63-2-206, as last amended by Chapter 229, Laws of Utah 2000

63-2-301, as last amended by Chapter 48, Laws of Utah 1999

63-2-302, as last amended by Chapter 48, Laws of Utah 1999

76-10-1311, as enacted by Chapter 179, Laws of Utah 1993

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

Section 1. Section **26-1-17.5** is amended to read:

26-1-17.5. Confidential records.

28 (1) A record classified as confidential under this title shall remain confidential, and be
29 released according to the provisions of this title, notwithstanding Section 63-2-909.

30 (2) In addition to those persons granted access to records described in Subsection
31 63-2-302(1)(~~b~~)(a)(ii), immunization records may be shared among schools, school districts, and
32 local and state health departments and the state Department of Human Services as necessary to
33 assure compliance with Section 53A-11-301 and to prevent, investigate, and control the causes of
34 epidemic, infectious, communicable, and other diseases affecting the public health.

35 Section 2. Section **31A-23-202** is amended to read:

36 **31A-23-202. Application for license.**

37 (1) The application for a license as an agent, a broker, or a consultant shall be made to the
38 commissioner on forms and in a manner he prescribes. The application shall provide information
39 about the applicant's identity, social security number, personal history, experience, education,
40 business record, and any other information the commissioner reasonably requires.

41 (2) An applicant's social security number is a private record under Subsection
42 63-2-302(1)(~~g~~)(a)(vii).

43 Section 3. Section **31A-26-202** is amended to read:

44 **31A-26-202. Application for license.**

45 (1) (a) The application for a license as an independent adjuster or public adjuster shall be
46 made to the commissioner on forms and in a manner he prescribes. The application shall provide
47 information about the identity, social security number, personal history, experience, education,
48 business record, and any other information as the commissioner reasonably requires.

49 (b) An applicant's social security number is a private record under Subsection
50 63-2-302(1)(~~g~~)(a)(vii).

51 (2) Insurance adjusters' licenses issued under former Title 31 remain in effect until their
52 expiration date, but they are subject to any requirement or limitation generally imposed under this
53 title on similar licenses issued after July 1, 1986. Upon timely payment of the license continuation
54 fee under Section 31A-3-103, the commissioner shall issue to adjusters licensed under the former
55 title new licenses conforming to the provisions of this title and rules adopted under it.

56 Section 4. Section **58-1-301** is amended to read:

57 **58-1-301. License application -- Licensing procedure.**

58 (1) (a) Each license applicant shall apply to the division in writing upon forms available

59 from the division. Each completed application shall contain documentation of the particular
60 qualifications required of the applicant, shall include the applicant's social security number, shall
61 be verified by the applicant, and shall be accompanied by the appropriate fees.

62 (b) An applicant's social security number is a private record under Subsection
63 63-2-302(1)~~(g)~~(a)(vii).

64 (2) (a) A license shall be issued to an applicant who submits a complete application if the
65 division determines that the applicant meets the qualifications of licensure.

66 (b) A written notice of additional proceedings shall be provided to an applicant who
67 submits a complete application, but who has been, is, or will be placed under investigation by the
68 division for conduct directly bearing upon his qualifications for licensure, if the outcome of
69 additional proceedings is required to determine the division's response to the application.

70 (c) A written notice of denial of licensure shall be provided to an applicant who submits
71 a complete application if the division determines that the applicant does not meet the qualifications
72 of licensure.

73 (d) A written notice of incomplete application and conditional denial of licensure shall be
74 provided to an applicant who submits an incomplete application. This notice shall advise the
75 applicant that the application is incomplete and that the application is denied, unless the applicant
76 corrects the deficiencies within the time period specified in the notice and otherwise meets all
77 qualifications for licensure.

78 (3) Before any person is issued a license under this title, all requirements for that license
79 as established under this title and by rule shall be met.

80 (4) If all requirements are met for the specific license, the division shall issue the license.

81 Section 5. Section **61-1-4** is amended to read:

82 **61-1-4. Licensing and notice filing procedure.**

83 (1) (a) A broker-dealer, agent, investment adviser, or investment adviser representative
84 must obtain an initial or renewal license by filing with the division or its designee an application
85 together with a consent to service of process under Section 61-1-26.

86 (b) (i) The application shall contain the applicant's social security number and whatever
87 information the division by rule requires concerning such matters as:

88 (A) the applicant's form and place of organization;

89 (B) the applicant's proposed method of doing business;

90 (C) the qualifications and business history of the applicant; in the case of a broker-dealer
91 or investment adviser, the qualifications and business history of any partner, officer, or director,
92 any person occupying a similar status or performing similar functions, or any person directly or
93 indirectly controlling the broker-dealer or investment adviser;

94 (D) any injunction or administrative order or conviction of a misdemeanor involving a
95 security or any aspect of the securities business and any conviction of a felony; and

96 (E) the applicant's financial condition and history.

97 (ii) An applicant's social security number is a private record under Subsection
98 63-2-302(1)(~~g~~)(a)(vii).

99 (c) The division may, by rule or order, require an applicant for an initial license to publish
100 an announcement of the application in one or more specified newspapers published in this state.

101 (d) Licenses or notice filings of broker-dealers, agents, investment advisers, and
102 investment adviser representatives shall expire on December 31 of each year.

103 (e) (i) If no denial order is in effect and no proceeding is pending under Section 61-1-6,
104 a license becomes effective at noon of the 30th day after an application is filed.

105 (ii) The division may by rule or order specify an earlier effective date and may by order
106 defer the effective date until noon of the 30th day after the filing of any amendment.

107 (iii) Licensing of a broker-dealer automatically constitutes licensing of only one partner,
108 officer, director, or a person occupying a similar status or performing similar functions as a
109 licensed agent of the broker-dealer.

110 (iv) Licensing of an investment adviser automatically constitutes licensing of only one
111 partner, officer, director, or a person occupying a similar status or performing similar functions.

112 (2) Except with respect to federal covered advisers whose only clients are those described
113 in Subsection 61-1-3(3)(b) or (c), a federal covered adviser shall file with the division, prior to
114 acting as a federal covered adviser in this state, a notice filing consisting of such documents as
115 have been filed with the Securities and Exchange Commission as the division by rule or order may
116 require.

117 (3) (a) Any applicant for an initial or renewal license as a broker-dealer or agent shall pay
118 a reasonable filing fee as determined under Section 61-1-18.4.

119 (b) Any applicant for an initial or renewal license as an investment adviser or investment
120 adviser representative who is subject to licensing under this chapter shall pay a reasonable filing

121 fee as determined under Section 61-1-18.4.

122 (c) Any person acting as a federal covered adviser in this state shall pay an initial and
123 renewal notice filing fee as determined under Section 61-1-18.4.

124 (d) If the license or renewal is not granted or the application is withdrawn, the division
125 shall retain the fee.

126 (4) A licensed broker-dealer or investment adviser may file an application for licensing
127 of a successor for the unexpired portion of the year. There shall be no filing fee.

128 (5) The division may by rule or order require a minimum capital for licensed
129 broker-dealers, subject to the limitations of Section 15 of the Securities Exchange Act of 1934, and
130 establish minimum financial requirements for investment advisers, subject to the limitations of
131 Section 222 of the Investment Advisers Act of 1940, which may include different requirements
132 for those investment advisers who maintain custody of or have discretionary authority over client
133 funds or securities and those investment advisers who do not.

134 (6) (a) The division may by rule or order require licensed broker-dealers and investment
135 advisers who have custody of or discretionary authority over client funds or securities to post
136 bonds in amounts as the division may prescribe, subject to the limitations of Section 15 of the
137 Securities Exchange Act of 1934 for broker-dealers and Section 222 of the Investment Advisers
138 Act of 1940 for investment advisers, and may determine their conditions.

139 (b) Any appropriate deposit of cash or securities may be accepted in lieu of any required
140 bond.

141 (c) No bond may be required of any licensee whose net capital, or in the case of an
142 investment adviser whose minimum financial requirements, which may be defined by rule, exceeds
143 the amounts required by the division.

144 (d) Every bond shall provide for suit on the bond by any person who has a cause of action
145 under Section 61-1-22 and, if the division by rule or order requires, by any person who has a cause
146 of action not arising under this chapter.

147 (e) Every bond shall provide that no suit may be maintained to enforce any liability on the
148 bond unless brought before the expiration of four years after the act or transaction constituting the
149 violation or the expiration of two years after the discovery by the plaintiff of the facts constituting
150 the violation, whichever expires first.

151 Section 6. Section **61-2-6** is amended to read:

152 **61-2-6. Licensing procedures and requirements.**

153 (1) The Real Estate Commission shall determine the qualifications and requirements of
154 applicants for a principal broker, associate broker, or sales agent license. The division, with the
155 concurrence of the commission, shall require and pass upon proof necessary to determine the
156 honesty, integrity, truthfulness, reputation, and competency of each applicant for an initial license
157 or for renewal of an existing license. The division, with the concurrence of the commission, shall
158 require an applicant for a sales agent license to complete an approved educational program not to
159 exceed 90 hours, and an applicant for an associate broker or principal broker license to complete
160 an approved educational program not to exceed 120 hours. The hours required by this section
161 mean 50 minutes of instruction in each 60 minutes; and the maximum number of program hours
162 available to an individual is ten hours per day. The division, with the concurrence of the
163 commission, shall require the applicant to pass an examination approved by the commission
164 covering the fundamentals of the English language, arithmetic, bookkeeping, real estate principles
165 and practices, the provisions of this chapter, the rules established by the Real Estate Commission,
166 and any other aspect of Utah real estate license law considered appropriate. Three years' full-time
167 experience as a real estate sales agent or its equivalent is required before any applicant may apply
168 for, and secure a principal broker or associate broker license in this state. The commission shall
169 establish by rule the criteria by which it will accept experience or special education in similar fields
170 of business in lieu of the three years' experience.

171 (2) (a) The division, with the concurrence of the commission, may require an applicant to
172 furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's
173 reputation and competency as set forth by rule.

174 (b) The division shall require an applicant to provide his social security number, which is
175 a private record under Subsection 63-2-302(1)[~~(g)~~](a)(vii).

176 (3) A nonresident principal broker may be licensed in this state by conforming to all the
177 provisions of this chapter except that of residency. A nonresident associate broker or sales agent
178 may become licensed in this state by conforming to all the provisions of this chapter except that
179 of residency and by being employed or engaged as an independent contractor by or on behalf of
180 a nonresident or resident principal broker who is licensed in this state.

181 (4) An applicant who has had a real estate license revoked shall be relicensed as prescribed
182 for an original application, but may not apply for a new license until at least five years after the

183 revocation. In the case of an applicant for a new license as a principal broker or associate broker,
184 the applicant is not entitled to credit for experience gained prior to the revocation of license.

185 Section 7. Section **63-2-202** is amended to read:

186 **63-2-202. Access to private, controlled, and protected documents.**

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

188 (a) the subject of the record;

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

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

192 (d) any other individual who:

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

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

196 (iii) if the record is a medical record described in Subsection 63-2-302(1)(~~(b)~~)(a)(ii), is a
197 health care provider, as defined in Subsection 26-33a-102(7), if releasing the record or information
198 in the record is consistent with normal professional practice and medical ethics; or

199 (e) any person to whom the record must be provided pursuant to court order as provided
200 in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

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

202 (i) a physician, psychologist, certified social worker, insurance provider or agent, or a
203 government public health agency upon submission of a release from the subject of the record that
204 is dated no more than 90 days prior to the date the request is made and a signed acknowledgment
205 of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

206 (ii) any person to whom the record must be disclosed pursuant to court order as provided
207 in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

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

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

- 214 (4) Upon request, a governmental entity shall disclose a protected record to:
- 215 (a) the person who submitted the record;
- 216 (b) any other individual who:
- 217 (i) has a power of attorney from all persons, governmental entities, or political
- 218 subdivisions whose interests were sought to be protected by the protected classification; or
- 219 (ii) submits a notarized release from all persons, governmental entities, or political
- 220 subdivisions whose interests were sought to be protected by the protected classification or from
- 221 their legal representatives dated no more than 90 days prior to the date the request is made; or
- 222 (c) any person to whom the record must be provided pursuant to a court order as provided
- 223 in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.
- 224 (5) A governmental entity may disclose a private, controlled, or protected record to another
- 225 governmental entity, political subdivision, another state, the United States, or a foreign government
- 226 only as provided by Section 63-2-206.
- 227 (6) Before releasing a private, controlled, or protected record, the governmental entity shall
- 228 obtain evidence of the requester's identity.
- 229 (7) A governmental entity shall disclose a record pursuant to the terms of a court order
- 230 signed by a judge from a court of competent jurisdiction, provided that:
- 231 (a) the record deals with a matter in controversy over which the court has jurisdiction;
- 232 (b) the court has considered the merits of the request for access to the record; and
- 233 (c) the court has considered and, where appropriate, limited the requester's use and further
- 234 disclosure of the record in order to protect privacy interests in the case of private or controlled
- 235 records, business confidentiality interests in the case of records protected under Subsections
- 236 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected
- 237 records;
- 238 (d) to the extent the record is properly classified private, controlled, or protected, the
- 239 interests favoring access, considering limitations thereon, outweigh the interests favoring
- 240 restriction of access; and
- 241 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection
- 242 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.
- 243 (8) (a) A governmental entity may disclose or authorize disclosure of private or controlled
- 244 records for research purposes if the governmental entity:

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

247 (ii) determines that the proposed research is bona fide, and that the value of the research
248 outweighs the infringement upon personal privacy;

249 (iii) requires the researcher to assure the integrity, confidentiality, and security of the
250 records and requires the removal or destruction of the individual identifiers associated with the
251 records as soon as the purpose of the research project has been accomplished;

252 (iv) prohibits the researcher from disclosing the record in individually identifiable form,
253 except as provided in Subsection (8)(b), or from using the record for purposes other than the
254 research approved by the governmental entity; and

255 (v) secures from the researcher a written statement of his understanding of and agreement
256 to the conditions of this subsection and his understanding that violation of the terms of this
257 subsection may subject him to criminal prosecution under Section 63-2-801.

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

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

264 (9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6) a governmental entity may
265 disclose records that are private under Section 63-2-302, or protected under Section 63-2-304 to
266 persons other than those specified in this section.

267 (b) Under Subsection 63-2-403(11)(b) the Records Committee may require the disclosure
268 of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected
269 under Section 63-2-304 to persons other than those specified in this section.

270 (c) Under Subsection 63-2-404(8) the court may require the disclosure of records that are
271 private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section
272 63-2-304 to persons other than those specified in this section.

273 Section 8. Section **63-2-206** is amended to read:

274 **63-2-206. Sharing records.**

275 (1) A governmental entity may provide a record that is private, controlled, or protected to

276 another governmental entity, a government-managed corporation, a political subdivision, the
277 federal government, or another state if the requesting entity:

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

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

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

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

285 (2) A governmental entity may provide a private or controlled record or record series to
286 another governmental entity, a political subdivision, a government-managed corporation, the
287 federal government, or another state if the requesting entity provides written assurance:

288 (a) that the record or record series is necessary to the performance of the governmental
289 entity's duties and functions;

290 (b) that the record or record series will be used for a purpose similar to the purpose for
291 which the information in the record or record series was collected or obtained; and

292 (c) that the use of the record or record series produces a public benefit that outweighs the
293 individual privacy right that protects the record or record series.

294 (3) A governmental entity may provide a record or record series that is protected under
295 Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a
296 government-managed corporation, the federal government, or another state if:

297 (a) the record is necessary to the performance of the requesting entity's duties and
298 functions; or

299 (b) the record will be used for a purpose similar to the purpose for which the information
300 in the record or record series was collected or obtained.

301 (4) (a) A governmental entity shall provide a private, controlled, or protected record to
302 another governmental entity, a political subdivision, a government-managed corporation, the
303 federal government, or another state if the requesting entity:

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

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

307 (iii) is an entity described in Subsection [~~63-2-206~~](1)(a), (b), (c), or (d).

308 (b) Subsection (4)(a)(iii) applies only if the record is a record described in Subsection
309 63-2-304(4).

310 (5) Before disclosing a record or record series under this section to another governmental
311 entity, another state, the United States, or a foreign government, the originating governmental
312 entity shall:

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

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

319 (6) A governmental entity may disclose a record to another state, the United States, or a
320 foreign government for the reasons listed in Subsections (1), (2), and (3) without complying with
321 the procedures of Subsection (2) or (5) if disclosure is authorized by executive agreement, treaty,
322 federal statute, compact, federal regulation, or state statute.

323 (7) A governmental entity receiving a record under this section is subject to the same
324 restrictions on disclosure of the material as the originating entity.

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

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

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

332 (b) records of publicly funded libraries as described in Subsection 63-2-302(1)[~~(e)~~](a)(iii).

333 (10) Records that may evidence or relate to a violation of law may be disclosed to a
334 government prosecutor, peace officer, or auditor.

335 Section 9. Section **63-2-301** is amended to read:

336 **63-2-301. Records that must be disclosed.**

337 (1) The following records are public except to the extent they contain information

338 expressly permitted to be treated confidentially under the provisions of Subsections 63-2-201(3)(b)
339 and (6)(a):

340 (a) laws;

341 (b) names, gender, gross compensation, job titles, job descriptions, business addresses,
342 business telephone numbers, number of hours worked per pay period, dates of employment, and
343 relevant education, previous employment, and similar job qualifications of the governmental
344 entity's former and present employees and officers excluding:

345 (i) undercover law enforcement personnel; and

346 (ii) investigative personnel if disclosure could reasonably be expected to impair the
347 effectiveness of investigations or endanger any individual's safety;

348 (c) final opinions, including concurring and dissenting opinions, and orders that are made
349 by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if
350 the proceedings were properly closed to the public, the opinion and order may be withheld to the
351 extent that they contain information that is private, controlled, or protected;

352 (d) final interpretations of statutes or rules by a governmental entity unless classified as
353 protected as provided in Subsections 63-2-304(15), (16), and (17);

354 (e) information contained in or compiled from a transcript, minutes, or report of the open
355 portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public
356 Meetings, including the records of all votes of each member of the governmental entity;

357 (f) judicial records unless a court orders the records to be restricted under the rules of civil
358 or criminal procedure or unless the records are private under this chapter;

359 (g) records filed with or maintained by county recorders, clerks, treasurers, surveyors,
360 zoning commissions, the Division of Forestry, Fire and State Lands, the School and Institutional
361 Trust Lands Administration, the Division of Oil, Gas and Mining, the Division of Water Rights,
362 or other governmental entities that give public notice of:

363 (i) titles or encumbrances to real property;

364 (ii) restrictions on the use of real property;

365 (iii) the capacity of persons to take or convey title to real property; or

366 (iv) tax status for real and personal property;

367 (h) records of the Department of Commerce that evidence incorporations, mergers, name
368 changes, and uniform commercial code filings;

369 (i) data on individuals that would otherwise be private under this chapter if the individual
370 who is the subject of the record has given the governmental entity written permission to make the
371 records available to the public;

372 (j) documentation of the compensation that a governmental entity pays to a contractor or
373 private provider;

374 (k) summary data; and

375 (l) voter registration records, including an individual's voting history, except for those parts
376 of the record that are classified as private in Subsection 63-2-302(1)~~(f)~~(a)(viii).

377 (2) The following records are normally public, but to the extent that a record is expressly
378 exempt from disclosure, access may be restricted under Subsection 63-2-201(3)(b), Section
379 63-2-302, 63-2-303, or 63-2-304:

380 (a) administrative staff manuals, instructions to staff, and statements of policy;

381 (b) records documenting a contractor's or private provider's compliance with the terms of
382 a contract with a governmental entity;

383 (c) records documenting the services provided by a contractor or a private provider to the
384 extent the records would be public if prepared by the governmental entity;

385 (d) contracts entered into by a governmental entity;

386 (e) any account, voucher, or contract that deals with the receipt or expenditure of funds by
387 a governmental entity;

388 (f) records relating to government assistance or incentives publicly disclosed, contracted
389 for, or given by a governmental entity, encouraging a person to expand or relocate a business in
390 Utah, except as provided in Subsection 63-2-304(34);

391 (g) chronological logs and initial contact reports;

392 (h) correspondence by and with a governmental entity in which the governmental entity
393 determines or states an opinion upon the rights of the state, a political subdivision, the public, or
394 any person;

395 (i) empirical data contained in drafts if:

396 (i) the empirical data is not reasonably available to the requester elsewhere in similar form;
397 and

398 (ii) the governmental entity is given a reasonable opportunity to correct any errors or make
399 nonsubstantive changes before release;

- 400 (j) drafts that are circulated to anyone other than:
- 401 (i) a governmental entity;
- 402 (ii) a political subdivision;
- 403 (iii) a federal agency if the governmental entity and the federal agency are jointly
- 404 responsible for implementation of a program or project that has been legislatively approved;
- 405 (iv) a government-managed corporation; or
- 406 (v) a contractor or private provider;
- 407 (k) drafts that have never been finalized but were relied upon by the governmental entity
- 408 in carrying out action or policy;
- 409 (l) original data in a computer program if the governmental entity chooses not to disclose
- 410 the program;
- 411 (m) arrest warrants after issuance, except that, for good cause, a court may order restricted
- 412 access to arrest warrants prior to service;
- 413 (n) search warrants after execution and filing of the return, except that a court, for good
- 414 cause, may order restricted access to search warrants prior to trial;
- 415 (o) records that would disclose information relating to formal charges or disciplinary
- 416 actions against a past or present governmental entity employee if:
- 417 (i) the disciplinary action has been completed and all time periods for administrative
- 418 appeal have expired; and
- 419 (ii) the charges on which the disciplinary action was based were sustained;
- 420 (p) records maintained by the Division of Forestry, Fire and State Lands, the School and
- 421 Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that evidence
- 422 mineral production on government lands;
- 423 (q) final audit reports;
- 424 (r) occupational and professional licenses;
- 425 (s) business licenses; and
- 426 (t) a notice of violation, a notice of agency action under Section 63-46b-3, or similar
- 427 records used to initiate proceedings for discipline or sanctions against persons regulated by a
- 428 governmental entity, but not including records that initiate employee discipline.
- 429 (3) The list of public records in this section is not exhaustive and should not be used to
- 430 limit access to records.

431 Section 10. Section **63-2-302** is amended to read:

432 **63-2-302. Private records.**

433 (1) (a) The following records are private:

434 [~~(a)~~] (i) records concerning an individual's eligibility for unemployment insurance benefits,
435 social services, welfare benefits, or the determination of benefit levels;

436 [~~(b)~~] (ii) records containing data on individuals describing medical history, diagnosis,
437 condition, treatment, evaluation, or similar medical data;

438 [~~(c)~~] (iii) records of publicly funded libraries that when examined alone or with other
439 records identify a patron;

440 [~~(d)~~] (iv) records received or generated for a Senate or House Ethics Committee
441 concerning any alleged violation of the rules on legislative ethics, prior to the meeting, and after
442 the meeting, if the ethics committee meeting was closed to the public;

443 [~~(e)~~] (v) records received or generated for a Senate confirmation committee concerning
444 character, professional competence, or physical or mental health of an individual:

445 [~~(f)~~] (A) if [~~prior to~~] before the meeting, the chair of the committee determines release of
446 the records:

447 [~~(A)~~] (I) reasonably could be expected to interfere with the investigation undertaken by
448 the committee; or

449 [~~(B)~~] (II) would create a danger of depriving a person of a right to a fair proceeding or
450 impartial hearing;

451 [~~(ii)~~] (B) after the meeting, if the meeting was closed to the public;

452 [~~(f)~~] (vi) records concerning a current or former employee of, or applicant for employment
453 with, a governmental entity that would disclose that individual's home address, home telephone
454 number, social security number, insurance coverage, marital status, or payroll deductions;

455 [~~(g)~~] (vii) that part of a record indicating a person's social security number if provided
456 under Section 31A-23-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6; and

457 [~~(h)~~] (viii) that part of a voter registration record identifying a voter's driver license or
458 identification card number, Social Security number, or last four digits of the Social Security
459 number.

460 (b) For records declared private under Subsection (1)(a)(vi), a current or former employee
461 of a government entity may:

462 (i) give actual written notice of the employee's status as a government employee to any
463 government entity holding records that would disclose the employee's home address, home
464 telephone number, social security number, insurance coverage, marital status, or payroll
465 deductions; and

466 (ii) in the notice, affirmatively request that the government entity holding those records
467 classify them as private.

468 (2) The following records are private if properly classified by a governmental entity:

469 (a) records concerning a current or former employee of, or applicant for employment with
470 a governmental entity, including performance evaluations and personal status information such as
471 race, religion, or disabilities, but not including records that are public under Subsection
472 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection ~~[63-2-302](1)(b)~~(a)(ii);

473 (b) records describing an individual's finances, except that the following are public:

474 (i) records described in Subsection 63-2-301(1);

475 (ii) information provided to the governmental entity for the purpose of complying with a
476 financial assurance requirement; or

477 (iii) records that must be disclosed in accordance with another statute;

478 (c) records of independent state agencies if the disclosure of those records would conflict
479 with the fiduciary obligations of the agency;

480 (d) other records containing data on individuals the disclosure of which constitutes a
481 clearly unwarranted invasion of personal privacy; and

482 (e) records provided by the United States or by a government entity outside the state that
483 are given with the requirement that the records be managed as private records, if the providing
484 entity states in writing that the record would not be subject to public disclosure if retained by it.

485 (3) (a) As used in this Subsection (3), "medical records" means medical reports, records,
486 statements, history, diagnosis, condition, treatment, and evaluation.

487 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
488 doctors, or affiliated entities are not private records or controlled records under Section 63-2-303
489 when the records are sought:

490 (i) in connection with any legal or administrative proceeding in which the patient's
491 physical, mental, or emotional condition is an element of any claim or defense; or

492 (ii) after a patient's death, in any legal or administrative proceeding in which any party

493 relies upon the condition as an element of the claim or defense.

494 (c) Medical records are subject to production in a legal or administrative proceeding
495 according to state or federal statutes or rules of procedure and evidence as if the medical records
496 were in the possession of a nongovernmental medical care provider.

497 Section 11. Section **76-10-1311** is amended to read:

498 **76-10-1311. Mandatory testing -- Retention of offender medical file -- Civil liability.**

499 (1) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty and
500 mentally ill, or been found guilty for violation of Section 76-10-1302, 76-10-1303, or 76-10-1313
501 shall be required to submit to a mandatory test to determine if the offender is an HIV positive
502 individual. The mandatory test shall be required and conducted prior to sentencing.

503 (2) If the mandatory test has not been conducted prior to sentencing, and the convicted
504 offender is already confined in a county jail or state prison, such person shall be tested while in
505 confinement.

506 (3) The local law enforcement agency shall cause the blood specimen of the offender as
507 defined in Subsection (1) confined in county jail to be taken and tested.

508 (4) The Department of Corrections shall cause the blood specimen of the offender defined
509 in Subsection (1) confined in any state prison to be taken and tested.

510 (5) The local law enforcement agency shall collect and retain in the offender's medical file
511 the following data:

512 (a) the HIV infection test results;

513 (b) a copy of the written notice as provided in Section 76-10-1312;

514 (c) photographic identification; and

515 (d) fingerprint identification.

516 (6) The local law enforcement agency shall classify the medical file as a private record
517 pursuant to Subsection 63-2-302(1)~~(b)~~(a)(ii) or a controlled record pursuant to Section 63-2-303.

518 (7) The person tested shall be responsible for the costs of testing, unless the person is
519 indigent. The costs will then be paid by the local law enforcement agency or the Department of
520 Corrections from the General Fund.

521 (8) (a) The laboratory performing testing shall report test results to only designated
522 officials in the Department of Corrections, the Department of Health, and the local law
523 enforcement agency submitting the blood specimen.

- 524 (b) Each department or agency shall designate those officials by written policy.
- 525 (c) Designated officials may release information identifying an offender under Section
526 76-10-1302, 76-10-1303, or 76-10-1313 who has tested HIV positive as provided under Subsection
527 63-2-202(1) and for purposes of prosecution pursuant to Section 76-10-1309.
- 528 (9) (a) An employee of the local law enforcement agency, the Department of Corrections,
529 or the Department of Health who discloses the HIV test results under this section is not civilly
530 liable except when disclosure constitutes fraud or malice as provided in Section 63-30-4.
- 531 (b) An employee of the local law enforcement agency, the Department of Corrections, or
532 the Department of Health who discloses the HIV test results under this section is not civilly or
533 criminally liable, except when disclosure constitutes a knowing violation of Section 63-2-801.
- 534 (10) When the medical file is released as provided in Section 63-2-803, the local law
535 enforcement agency, the Department of Corrections, or the Department of Health or its officers
536 or employees are not liable for damages for release of the medical file.

Legislative Review Note
as of 1-8-01 12:54 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel