

1 **GOVERNMENT RECORDS ACCESS AND**
2 **MANAGEMENT - RECORDS RELATED TO**
3 **EXPLOSIVES**
4 2002 GENERAL SESSION
5 STATE OF UTAH
6 **Sponsor: Bill Wright**

7 **This act modifies the Government Records Access and Management Act to provide that**
8 **certain records related to explosives may be classified as protected. The act makes technical**
9 **changes. § This act provides a coordination clause. §**

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

11 AMENDS:

12 **63-2-103**, as last amended by Chapter 13, Laws of Utah 1994

13 **63-2-304**, as last amended by Chapters 232 and 335, Laws of Utah 2000

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

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

16 **63-2-103. Definitions.**

17 As used in this chapter:

18 (1) "Audit" means:

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

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

24 (2) "Chronological logs" mean the regular and customary summary records of law
25 enforcement agencies and other public safety agencies that show the time and general nature of
26 police, fire, and paramedic calls made to the agency and any arrests or jail bookings made by the
27 agency.



28 (3) "Classification," "classify," and their derivative forms mean determining whether a
29 record series, record, or information within a record is public, private, controlled, protected, or
30 exempt from disclosure under Subsection 63-2-201(3)(b).

31 (4) (a) "Computer program" means a series of instructions or statements that permit the
32 functioning of a computer system in a manner designed to provide storage, retrieval, and
33 manipulation of data from the computer system, and any associated documentation and source
34 material that explain how to operate the computer program.

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

36 (i) the original data, including numbers, text, voice, graphics, and images;
37 (ii) analysis, compilation, and other manipulated forms of the original data produced by
38 use of the program; or

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

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

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

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

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

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

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

54 (8) "Explosive" means a chemical compound, device, or mixture:

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

56 (b) that contains oxidizing or combustive units or other ingredients in proportions,

57 quantities, or packing so that:

58 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the

59 compound or mixture may cause a sudden generation of highly heated gases; and

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

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

62 (B) causing death or serious bodily injury.

63 [~~(8)~~] (9) "Government audit agency" means any governmental entity that conducts audits.

64 [~~(9)~~] (10) (a) "Governmental entity" means:

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

69 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
Analyst,

70 Office of Legislative Research and General Counsel, the Legislature, and legislative committees,
71 except any political party, group, caucus, or rules or sifting committee of the Legislature;

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

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

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

79 (b) "Governmental entity" also means every office, agency, board, bureau, committee,
80 department, advisory board, or commission of the entities listed in Subsection [~~(9)~~] (10)(a) that is
81 funded or established by the government to carry out the public's business.

82 [~~(10)~~] (11) "Gross compensation" means every form of remuneration payable for a given
83 period to an individual for services provided including salaries, commissions, vacation pay,
84 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar
85 benefit received from the individual's employer.

86 [~~(11)~~] (12) "Individual" means a human being.

87 [~~(12)~~] (13) (a) "Initial contact report" means an initial written or recorded report,
however
88 titled, prepared by peace officers engaged in public patrol or response duties describing official
89 actions initially taken in response to either a public complaint about or the discovery of an
apparent

90 violation of law, which report may describe:

- 91 (i) the date, time, location, and nature of the complaint, the incident, or offense;
- 92 (ii) names of victims;
- 93 (iii) the nature or general scope of the agency's initial actions taken in response to the
94 incident;
- 95 (iv) the general nature of any injuries or estimate of damages sustained in the incident;
- 96 (v) the name, address, and other identifying information about any person arrested or
97 charged in connection with the incident; or
- 98 (vi) the identity of the public safety personnel, [t]except undercover personnel[], or
99 prosecuting attorney involved in responding to the initial incident.

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

104 [(13)] (14) "Person" means any individual, nonprofit or profit corporation, partnership,
105 sole proprietorship, or other type of business organization.

106 [(14)] (15) "Private provider" means any person who contracts with a governmental
entity

107 to provide services directly to the public.

108 [(15)] (16) "Private record" means a record containing data on individuals that is private
109 as provided by Section 63-2-302.

110 [(16)] (17) "Protected record" means a record that is classified protected as provided by
111 Section 63-2-304.

112 [(17)] (18) "Public record" means a record that is not private, controlled, or protected and
113 that is not exempt from disclosure as provided in Subsection 63-2-201(3)(b).

114 [(18)] (19) (a) "Record" means all books, letters, documents, papers, maps, plans,
115 photographs, films, cards, tapes, recordings, electronic data, or other documentary materials
116 regardless of physical form or characteristics:

117 (i) which are prepared, owned, received, or retained by a governmental entity or political
118 subdivision; and

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

121 (b) "Record" does not mean:
122 (i) temporary drafts or similar materials prepared for the originator's personal use or
123 prepared by the originator for the personal use of an individual for whom he is working;
124 (ii) materials that are legally owned by an individual in his private capacity;
125 (iii) materials to which access is limited by the laws of copyright or patent unless the
126 copyright or patent is owned by a governmental entity or political subdivision;
127 (iv) proprietary software;
128 (v) junk mail or commercial publications received by a governmental entity or an official
129 or employee of a governmental entity;
130 (vi) books and other materials that are cataloged, indexed, or inventoried and contained
131 in the collections of libraries open to the public, regardless of physical form or characteristics of
132 the material;
133 (vii) daily calendars and other personal notes prepared by the originator for the
originator's
134 personal use or for the personal use of an individual for whom he is working;
135 (viii) computer programs as defined in Subsection (4) that are developed or purchased by
136 or for any governmental entity for its own use; or
137 (ix) notes or internal memoranda prepared as part of the deliberative process by a
member
138 of the judiciary, an administrative law judge, a member of the Board of Pardons and Parole, or a
139 member of any other body charged by law with performing a quasi-judicial function.
140 [(19)] (20) "Record series" means a group of records that may be treated as a unit for
141 purposes of designation, description, management, or disposition.
142 [(20)] (21) "Records committee" means the State Records Committee created in Section
143 63-2-501.
144 [(21)] (22) "Records officer" means the individual appointed by the chief administrative
145 officer of each governmental entity, or the political subdivision to work with state archives in the
146 care, maintenance, scheduling, designation, classification, disposal, and preservation of records.
147 [(22)] (23) "Schedule," "scheduling," and their derivative forms mean the process of
148 specifying the length of time each record series should be retained by a governmental entity for
149 administrative, legal, fiscal, or historical purposes and when each record series should be
150 transferred to the state archives or destroyed.
151 [(23)] (24) "State archives" means the Division of Archives and Records Service created

152 in Section 63-2-901.

153 [~~(24)~~] (25) "State archivist" means the director of the state archives.

154 [~~(25)~~] (26) "Summary data" means statistical records and compilations that contain data
155 derived from private, controlled, or protected information but that do not disclose private,
156 controlled, or protected information.

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

158 **63-2-304. Protected records.**

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

160 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
has

161 provided the governmental entity with the information specified in Section 63-2-308;

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

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

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

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

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

175 (4) records the disclosure of which could cause commercial injury to, or confer a
176 competitive advantage upon a potential or actual competitor of, a commercial project entity as
177 defined in Subsection 11-13-3(3);

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

180 (6) records the disclosure of which would impair governmental procurement proceedings
181 or give an unfair advantage to any person proposing to enter into a contract or agreement with a
182 governmental entity, except that this Subsection (6) does not restrict the right of a person to see

183 bids submitted to or by a governmental entity after bidding has closed;

184 (7) records that would identify real property or the appraisal or estimated value of real or
185 personal property, including intellectual property, under consideration for public acquisition
before

186 any rights to the property are acquired unless:

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

189 (b) the information has already been disclosed to persons not employed by or under a
duty

190 of confidentiality to the entity;

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

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

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

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

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

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

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

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

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

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

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

217 (e) reasonably could be expected to disclose investigative or audit techniques,
procedures,

218 policies, or orders not generally known outside of government if disclosure would interfere with
219 enforcement or audit efforts;

220 (10) records the disclosure of which would jeopardize the life or safety of an individual;
221 (11) records the disclosure of which would jeopardize the security of governmental
222 property, governmental programs, or governmental recordkeeping systems from damage, theft, or
223 other appropriation or use contrary to law or public policy;

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

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

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

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

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

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

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

241 (19) personal files of a legislator, including personal correspondence to or from a
member
242 of the Legislature, but not correspondence that gives notice of legislative action or policy;

245 (20) (a) records in the custody or control of the Office of Legislative Research and
General
246 Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or
247 contemplated course of action before the legislator has elected to support the legislation or course
248 of action, or made the legislation or course of action public; and
249 (b) for purposes of this Subsection (20), a "Request For Legislation" submitted to the
250 Office of Legislative Research and General Counsel is a public document unless a legislator
251 submits the "Request For Legislation" with a request that it be maintained as a protected record
252 until such time as the legislator elects to make the legislation or course of action public;
253 (21) research requests from legislators to the Office of Legislative Research and General
254 Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in
response
255 to these requests;
256 (22) drafts, unless otherwise classified as public;
257 (23) records concerning a governmental entity's strategy about collective bargaining or
pending litigation;
259 (24) records of investigations of loss occurrences and analyses of loss occurrences that
260 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured
261 Employers' Fund, or similar divisions in other governmental entities;
262 (25) records, other than personnel evaluations, that contain a personal recommendation
263 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
personal
264 privacy, or disclosure is not in the public interest;
265 (26) records that reveal the location of historic, prehistoric, paleontological, or biological
266 resources that if known would jeopardize the security of those resources or of valuable historic,
267 scientific, educational, or cultural information;
268 (27) records of independent state agencies if the disclosure of the records would conflict
269 with the fiduciary obligations of the agency;
270 (28) records of a public institution of higher education regarding tenure evaluations,
271 appointments, applications for admissions, retention decisions, and promotions, which could be
272 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public
273 Meetings, provided that records of the final decisions about tenure, appointments, retention,
274 promotions, or those students admitted, may not be classified as protected under this section;
275 (29) records of the governor's office, including budget recommendations, legislative

276 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
277 policies or contemplated courses of action before the governor has implemented or rejected those
278 policies or courses of action or made them public;

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

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

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

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

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

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

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

301 (37) the name of a donor or a prospective donor to a governmental entity, including a
302 public institution of higher education, and other information concerning the donation that could
303 reasonably be expected to reveal the identity of the donor, provided that:

304 (a) the donor requests anonymity in writing;

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

307 (c) except for public institutions of higher education, the governmental unit to which the
308 donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no
309 regulatory or legislative authority over the donor, a member of his immediate family, or any entity
310 owned or controlled by the donor or his immediate family;

311 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;

312 (39) a notification of workers' compensation insurance coverage described in Section
313 34A-2-205; [and]

314 (40) (a) subject to Subsection (40)(b), the following records of a public institution of
315 education, [which] that have been developed, discovered, or received by or on behalf of faculty,
316 staff, employees, or students of the institution:

317 (i) unpublished lecture notes[;];

318 (ii) unpublished research notes and data[;];

319 (iii) unpublished manuscripts[;];

320 (iv) creative works in process[;];

321 (v) scholarly correspondence[;]; and

322 (vi) confidential information contained in research proposals[. ~~Nothing~~]; and

323 (b) nothing in this Subsection (40) shall be construed to affect the ownership of a record[-];
324 and

325 (41) records that provide detail as to the location of an explosive, including a map or other
326 document that indicates the location of:

327 (a) a production facility; or

328 (b) a magazine.

§ SECTION 3. COORDINATION CLAUSE.

**IF THIS BILL AND S.B. 93, CLASSIFICATION OF CERTAIN LEGISLATIVE RECORDS, BOTH
PASS, IT IS THE INTENT OF THE LEGISLATURE THAT THE AMENDMENTS IN SECTION
63-2-304 (40) IN S.B. 93 SUPERCEDE THE AMENDMENTS TO SECTION 63-2-304(40) IN
THIS BILL. §**

Legislative Review Note

as of 1-15-02 3:34 PM

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

Office of Legislative Research and General Counsel