

**GOVERNMENT RECORDS ACCESS &
MANAGEMENT ACT - TECHNICAL
REVISIONS**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Alicia L. Suazo

This act modifies the Government Records Access and Management Act and references to that act to make technical revisions. This act provides an effective date.

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

AMENDS:

31A-31-104, as enacted by Chapter 243, Laws of Utah 1994

53-5-708, as last amended by Chapters 12 and 54, Laws of Utah 1994

63-2-301 (Effective 07/01/02), as last amended by Chapter 8, Laws of Utah 2001, First Special Session

63-2-301 (Superseded 07/01/02), as last amended by Chapter 48, Laws of Utah 1999

63-2-903, as last amended by Chapter 280, Laws of Utah 1992

77-38-3, as last amended by Chapter 103, Laws of Utah 1997

78-2a-6, as enacted by Chapter 321, Laws of Utah 1999

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

Section 1. Section **31A-31-104** is amended to read:

31A-31-104. Disclosure of information.

(1) (a) Subject to Subsection (2), upon written request by an insurer to an authorized agency, the authorized agency may release to the insurer information or evidence that is relevant to any suspected insurance fraud.

(b) Upon written request by an authorized agency to an insurer, the insurer or an agent authorized by the insurer to act on the insurer's behalf shall release to the authorized agency information or evidence that is relevant to any suspected insurance fraud.

(2) (a) Any information or evidence furnished to an authorized agency under this section may be classified as a protected record in accordance with Subsection 63-2-304~~(8)~~ of the

~~Government Records Access and Management Act] (9).~~

(b) Any information or evidence furnished to an insurer under this section is not subject to discovery in a civil proceeding unless, after reasonable notice to any insurer, agent, or any authorized agency that has an interest in the information and subsequent hearing, a court determines that the public interest and any ongoing criminal investigation will not be jeopardized by the disclosure.

(c) An insurer shall report to the department agency terminations based upon a violation of this chapter.

Section 2. Section **53-5-708** is amended to read:

53-5-708. Permit -- Names private.

(1) When any permit is issued, a record shall be maintained in the office of the licensing authority. Notwithstanding the requirements of Subsection 63-2-301(1)(b), the names, addresses, telephone numbers, dates of birth, and Social Security numbers of persons receiving permits are protected records under Subsection 63-2-304[~~(9)~~] (10).

(2) Copies of each permit issued shall be filed immediately by the licensing authority with the division.

Section 3. Section **63-2-301 (Effective 07/01/02)** is amended to read:

63-2-301 (Effective 07/01/02). Records that must be disclosed.

(1) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63-2-201(3)(b) and (6)(a):

(a) laws;

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

(i) undercover law enforcement personnel; and

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

(c) final opinions, including concurring and dissenting opinions, and orders that are made

by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63-2-304~~(15)~~, (16), ~~and~~ (17), and (18);

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

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

(g) records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands

Administration, the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

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

(iv) tax status for real and personal property;

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

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

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

(k) summary data; and

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

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

- (a) administrative staff manuals, instructions to staff, and statements of policy;
- (b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;
- (c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;
- (d) contracts entered into by a governmental entity;
- (e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;
- (f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304[~~(34)~~] (35);
- (g) chronological logs and initial contact reports;
- (h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;
 - (i) empirical data contained in drafts if:
 - (i) the empirical data is not reasonably available to the requester elsewhere in similar form;
- and
 - (ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;
- (j) drafts that are circulated to anyone other than:
 - (i) a governmental entity;
 - (ii) a political subdivision;
 - (iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

- (iv) a government-managed corporation; or
 - (v) a contractor or private provider;
 - (k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;
 - (l) original data in a computer program if the governmental entity chooses not to disclose the program;
 - (m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
 - (n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;
 - (o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:
 - (i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and
 - (ii) the charges on which the disciplinary action was based were sustained;
 - (p) records maintained by the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that evidence mineral production on government lands;
 - (q) final audit reports;
 - (r) occupational and professional licenses;
 - (s) business licenses; and
 - (t) a notice of violation, a notice of agency action under Section 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.
- (3) The list of public records in this section is not exhaustive and should not be used to limit access to records.

Section 4. Section **63-2-301 (Superseded 07/01/02)** is amended to read:

63-2-301 (Superseded 07/01/02). Records that must be disclosed.

(1) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63-2-201(3)(b) and (6)(a):

(a) laws;

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

(i) undercover law enforcement personnel; and

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

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

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63-2-304~~(15)~~, (16), ~~and~~ (17), and (18);

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

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

(g) records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands

Administration, the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

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

- (iv) tax status for real and personal property;
 - (h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;
 - (i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;
 - (j) documentation of the compensation that a governmental entity pays to a contractor or private provider;
 - (k) summary data; and
 - (l) voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in Subsection 63-2-302(1)(h).
- (2) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63-2-201(3)(b), Section 63-2-302, 63-2-303, or 63-2-304:
- (a) administrative staff manuals, instructions to staff, and statements of policy;
 - (b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;
 - (c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;
 - (d) contracts entered into by a governmental entity;
 - (e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;
 - (f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304[(34)] (35);
 - (g) chronological logs and initial contact reports;
 - (h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any

person;

(i) empirical data contained in drafts if:

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

and

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

(j) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

(k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;

(l) original data in a computer program if the governmental entity chooses not to disclose the program;

(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

(p) records maintained by the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that evidence

mineral production on government lands;

(q) final audit reports;

(r) occupational and professional licenses;

(s) business licenses; and

(t) a notice of violation, a notice of agency action under Section 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

(3) The list of public records in this section is not exhaustive and should not be used to limit access to records.

Section 5. Section **63-2-903** is amended to read:

63-2-903. Duties of governmental entities.

The chief administrative officer of each governmental entity shall:

(1) establish and maintain an active, continuing program for the economical and efficient management of the governmental entity's records as provided by this chapter;

(2) appoint one or more records officers who will be trained to work with the state archives in the care, maintenance, scheduling, disposal, classification, designation, access, and preservation of records;

(3) make and maintain adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the governmental entity designed to furnish information to protect the legal and financial rights of persons directly affected by the entity's activities;

(4) submit to the state archivist proposed schedules of records for final approval by the records committee;

(5) cooperate with the state archivist in conducting surveys made by the state archivist;

(6) comply with rules issued by the Department of Administrative Services as provided by Section 63-2-904;

(7) report to the state archives the designation of record series that it maintains;

(8) report to the state archives the classification of each record series that is classified; and

(9) establish and report to the state archives retention schedules for objects that the governmental entity determines are not records under Subsection [~~63-2-301~~] 63-2-103(18), but that have historical or evidentiary value.

Section 6. Section **77-38-3** is amended to read:

77-38-3. Notification to victims -- Initial notice, election to receive subsequent notices -- Form of notice -- Protected victim information.

(1) Within seven days of the filing of felony criminal charges against a defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and locatable victims of the crime contained in the charges, except as otherwise provided in this chapter.

(2) The initial notice to the victim of a crime shall provide information about electing to receive notice of subsequent important criminal justice hearings listed in Subsections 77-38-2(5)(a) through (f) and rights under this chapter.

(3) The prosecuting agency shall provide notice to a victim of a crime for the important criminal justice hearings, provided in Subsections 77-38-2(5)(a) through (f) which the victim has requested.

(4) (a) The responsible prosecuting agency may provide initial and subsequent notices in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.

(b) In the event of an unforeseen important criminal justice hearing, listed in Subsections 77-38-2(5)(a) through (f) for which a victim has requested notice, a good faith attempt to contact the victim by telephone shall be considered sufficient notice, provided that the prosecuting agency subsequently notifies the victim of the result of the proceeding.

(5) (a) The court shall take reasonable measures to ensure that its scheduling practices for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for victims of crimes to be notified.

(b) The court shall also consider whether any notification system that it might use to provide notice of judicial proceedings to defendants could be used to provide notice of those same proceedings to victims of crimes.

(6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give notice to the responsible prosecuting agency of any motion for modification of any determination made at any of the important criminal justice hearings provided in Subsections 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the prosecuting agency may comply with its notification obligation.

(7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).

(b) The board may provide notice in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.

(8) Prosecuting agencies and the Board of Pardons and Parole are required to give notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through (f) only where the victim has responded to the initial notice, requested notice of subsequent proceedings, and provided a current address and telephone number if applicable.

(9) (a) Law enforcement and criminal justice agencies shall refer any requests for notice or information about crime victim rights from victims to the responsible prosecuting agency.

(b) In a case in which the Board of Pardons and Parole is involved, the responsible prosecuting agency shall forward any request for notice that it has received from a victim to the Board of Pardons and Parole.

(10) In all cases where the number of victims exceeds ten, the responsible prosecuting agency may send any notices required under this chapter in its discretion to a representative sample of the victims.

(11) (a) A victim's address, telephone number, and victim impact statement maintained by a peace officer, prosecuting agency, Youth Parole Authority, Division of Youth Corrections, Department of Corrections, and Board of Pardons and Parole, for purposes of providing notice under this section, is classified as protected as provided in Subsection 63-2-304~~(9)~~ (10).

(b) The victim's address, telephone number, and victim impact statement is available only to the following persons or entities in the performance of their duties:

(i) a law enforcement agency, including the prosecuting agency;

- (ii) a victims' right committee as provided in Section 77-37-5;
- (iii) a governmentally sponsored victim or witness program;
- (iv) the Department of Corrections;
- (v) Office of Crime Victims' Reparations;
- (vi) Commission on Criminal and Juvenile Justice; and
- (vii) the Board of Pardons and Parole.

(12) The notice provisions as provided in this section do not apply to misdemeanors as provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section 77-38-2.

Section 7. Section **78-2a-6** is amended to read:

**78-2a-6. Appellate Mediation Office -- Protected records and information --
Governmental immunity.**

(1) Unless a more restrictive rule of court is adopted pursuant to Subsection 63-2-201(3)(b), information and records relating to any matter on appeal received or generated by the Chief Appellate Mediator or other staff of the Appellate Mediation Office as a result of any party's participation or lack of participation in the settlement program shall be maintained as protected records pursuant to Subsections 63-2-304(16), (17), (18), and (33).

(2) In addition to the access restrictions on protected records provided in Section 63-2-202, the information and records may not be disclosed to judges, staff, or employees of any court of this state.

(3) The Chief Appellate Mediator may disclose statistical and other demographic information as may be necessary and useful to report on the status and to allow supervision and oversight of the Appellate Mediation Office.

(4) When acting as mediators, the Chief Appellate Mediator and other professional staff of the Appellate Mediation Office shall be immune from liability pursuant to Title 63, Chapter 30, Utah Governmental Immunity Act.

(5) Pursuant to Utah Constitution, Article VIII, Section 4, the Supreme Court may exercise overall supervision of the Appellate Mediation Office as part of the appellate process.

Section 8. Effective date.

This act takes effect on May 6, 2002, except that the amendments to Section 63-2-301 (Effective 07/01/02) take effect on July 1, 2002.