

1 **CLASSIFICATION OF CERTAIN**
2 **LEGISLATIVE RECORDS**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Peter C. Knudson**

6 **This act amends the Government Records Access and Management Act to enlarge the**
7 **protections afforded a request for a legislative audit. The act makes technical changes. The**
8 **act has an immediate effective date.**

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

10 AMENDS:

11 **63-2-304**, as last amended by Chapters 232 and 335, Laws of Utah 2000

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

13 Section 1. Section **63-2-304** is amended to read:

14 **63-2-304. Protected records.**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

58 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the

59 value of the subject property have already been disclosed to persons not employed by or under a
60 duty of confidentiality to the entity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

99 (19) personal files of a legislator, including personal correspondence to or from a member
100 of the Legislature, ~~[but not]~~ provided that correspondence that gives notice of legislative action or
101 policy may not be classified as protected under this section;

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

106 (b) ~~[for purposes of this subsection, a "Request For Legislation"]~~ notwithstanding
107 Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research
108 and General Counsel is a public document unless a legislator ~~[submits the "Request For~~
109 ~~Legislation" with a request that it]~~ asks that the records requesting the legislation be maintained
110 as ~~[a] protected [record]~~ records until such time as the legislator elects to make the legislation or
111 course of action public;

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

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

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

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

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

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

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

129 (28) records of a public institution of higher education regarding tenure evaluations,
130 appointments, applications for admissions, retention decisions, and promotions, which could be
131 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public
132 Meetings, provided that records of the final decisions about tenure, appointments, retention,
133 promotions, or those students admitted, may not be classified as protected under this section;

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

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

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

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

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

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

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

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

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

163 (a) the donor requests anonymity in writing;

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

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

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

171 (39) a notification of workers' compensation insurance coverage described in Section
172 34A-2-205; ~~and~~

173 (40) (a) the following records of a public institution of education, which have been
174 developed, discovered, or received by or on behalf of faculty, staff, employees, or students of the
175 institution: unpublished lecture notes, unpublished research notes and data, unpublished
176 manuscripts, creative works in process, scholarly correspondence, and confidential information
177 contained in research proposals~~[- Nothing in this]; and~~

178 (b) Subsection (40)(a) ~~shall~~ may not be construed to affect the ownership of a record~~[-];~~
179 and

180 (41) (a) records in the custody or control of the Office of Legislative Auditor General that
181 would reveal a particular legislator's request for a legislative audit prior to the date that audit is
182 completed and made public; and

183 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
184 Office of the Legislative Auditor General is a public document unless the legislator asks that the
185 records in the custody or control of the Office of Legislative Auditor General that would reveal
186 a particular legislator's request for a legislative audit be maintained as protected records until the
187 audit is completed and made public.

188 Section 2. **Effective date.**

189 If approved by two-thirds of all the members elected to each house, this act takes effect
190 upon approval by the governor, or the day following the constitutional time limit of Utah
191 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the
192 date of veto override.

Legislative Review Note
as of 12-18-01 8:14 AM

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

Office of Legislative Research and General Counsel