

1 **PRIVATE RECORDS AMENDMENTS UNDER**
2 **GOVERNMENT RECORDS ACCESS AND**
3 **MANAGEMENT ACT**

4 2002 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Michael G. Waddoups**

7 **This act modifies the Government Records Access and Management Act by modifying**
8 **provisions relating to disclosure of employee records. This act takes effect July 1, 2002.**

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

10 AMENDS:

11 **63-2-302 (Effective 07/01/02)**, as last amended by Chapter 8, Laws of Utah 2001, First
12 Special Session

13 **63-2-803 (Effective 07/01/02)**, as last amended by Chapter 8, Laws of Utah 2001, First
14 Special Session

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

16 Section 1. Section **63-2-302 (Effective 07/01/02)** is amended to read:

17 **63-2-302 (Effective 07/01/02). Private records.**

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

19 (i) records concerning an individual's eligibility for unemployment insurance benefits,
20 social services, welfare benefits, or the determination of benefit levels;

21 (ii) records containing data on individuals describing medical history, diagnosis, condition,
22 treatment, evaluation, or similar medical data;

23 (iii) records of publicly funded libraries that when examined alone or with other records
24 identify a patron;

25 (iv) records received or generated for a Senate or House Ethics Committee concerning any
26 alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if
27 the ethics committee meeting was closed to the public;



28 (v) records received or generated for a Senate confirmation committee concerning
29 character, professional competence, or physical or mental health of an individual:

30 (A) if before the meeting, the chair of the committee determines release of the records:

31 (I) reasonably could be expected to interfere with the investigation undertaken by the
32 committee; or

33 (II) would create a danger of depriving a person of a right to a fair proceeding or impartial
34 hearing;

35 (B) after the meeting, if the meeting was closed to the public;

36 (vi) employment records concerning a current or former employee of, or applicant for
37 employment with, a governmental entity that would disclose that individual's home address, home
38 telephone number, social security number, insurance coverage, marital status, or payroll
39 deductions;

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

42 (viii) that part of a voter registration record identifying a voter's driver license or
43 identification card number, social security number, or last four digits of the social security number.

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

46 (i) give actual written notice of the employee's status as a government employee to each
47 agency of a government entity holding records that would disclose the employee's home address,
48 home telephone number, social security number, insurance coverage, marital status, or payroll
49 deductions; and

50 (ii) in the notice:

51 (A) provide evidence of qualifying employment;

52 (B) request assistance by the agency to identify the records containing information in
53 Subsection (1)(b)(i);

54 (C) designate each specific record that the applicant desires to be classified as private; and

55 (D) affirmatively request that the government entity holding those records classify them
56 as private.

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

58 (a) records concerning a current or former employee of, or applicant for employment with

59 a governmental entity, including performance evaluations and personal status information such as
60 race, religion, or disabilities, but not including records that are public under Subsection
61 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection(1)(a)(ii);

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

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

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

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

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

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

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

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

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

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

81 (ii) after a patient's death, in any legal or administrative proceeding in which any party
82 relies upon the condition as an element of the claim or defense.

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

86 Section 2. Section **63-2-803 (Effective 07/01/02)** is amended to read:

87 **63-2-803 (Effective 07/01/02). No liability for certain decisions of a governmental**
88 **entity or a political subdivision.**

89 (1) Neither the governmental entity or political subdivision, nor any officer or employee

90 of the governmental entity or political subdivision, is liable for damages resulting from the release
91 of a record where the person or government requesting the record presented evidence of authority
92 to obtain the record even if it is subsequently determined that the requester had no authority.

93 (2) Neither the governmental entity or political subdivision, nor any officer or employee
94 of the governmental entity or political subdivision, is liable for damages arising from the negligent
95 disclosure of records classified as private under Subsection 63-2-302(1)(a)(vi) unless:

96 (a) the disclosure was of employment records maintained by the governmental entity; or

97 (b) ~~[the disclosure was of nonemployment records and]~~ the current or former government
98 employee had filed the notice required by Subsection 63-2-302(1)(b).

99 Section 3. **Effective date.**

100 This act takes effect on July 1, 2002.

Legislative Review Note
as of 1-24-02 10:47 AM

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

Office of Legislative Research and General Counsel