

1                                   **GOVERNMENT RECORDS PROTECTIONS FOR**  
2                                   **FEDERAL MISSION OF NATIONAL GUARD**

3                                   2003 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Sponsor: Peter C. Knudson**

6   **This act modifies provisions of the Government Records Access and Management Act**  
7   **related to protected records by including information regarding National Guard**  
8   **operations or activities in support of the National Guard's federal mission.**

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

10   AMENDS:

11           **63-2-304**, as last amended by Chapters 78, 86, 108, 283 and 286, Laws of Utah 2002

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

18           (2) commercial information or nonindividual financial information obtained from a  
19   person 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  
24   than the public in obtaining access; and

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

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



28 to 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 11-13-103[~~(3)~~] (4);

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  
37 proceedings or give an unfair advantage to any person proposing to enter into a contract or  
38 agreement with a governmental entity, except that this Subsection (6) does not restrict the right  
39 of a person to see bids 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  
41 or personal property, including intellectual property, under consideration for public acquisition  
42 before 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  
46 duty 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  
50 property, the potential sellers have already learned of the governmental entity's estimated value  
51 of the 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  
55 of the subject property, unless:

56 (a) the public interest in access outweighs the interests in restricting access, including  
57 the 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

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

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

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

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

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

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

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

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

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

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

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

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

103 (19) personal files of a legislator, including personal correspondence to or from a  
104 member of the Legislature, provided that correspondence that gives notice of legislative action  
105 or policy may not be classified as protected under this section;

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

110 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
111 Office of Legislative Research and General Counsel is a public document unless a legislator  
112 asks that the records requesting the legislation be maintained as protected records until such  
113 time as the legislator elects to make the legislation or course of action public;

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

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

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

120 (24) records of investigations of loss occurrences and analyses of loss occurrences that

121 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the  
122 Uninsured Employers' Fund, or similar divisions in other governmental entities;

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

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

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

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

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

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

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

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

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

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

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

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

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

166 (a) the donor requests anonymity in writing;

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

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

173 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and  
174 73-18-13;

175 (39) a notification of workers' compensation insurance coverage described in Section  
176 34A-2-205;

177 (40) (a) the following records of a public institution of education, which have been  
178 developed, discovered, or received by or on behalf of faculty, staff, employees, or students of  
179 the institution:

180 (i) unpublished lecture notes;

181 (ii) unpublished research notes and data;

182 (iii) unpublished manuscripts;

183 (iv) creative works in process;  
184 (v) scholarly correspondence; and  
185 (vi) confidential information contained in research proposals; and  
186 (b) Subsection (40)(a) may not be construed to affect the ownership of a record;  
187 (41) (a) records in the custody or control of the Office of Legislative Auditor General  
188 that would reveal the name of a particular legislator who requests a legislative audit prior to the  
189 date that audit is completed and made public; and  
190 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the  
191 Office of the Legislative Auditor General is a public document unless the legislator asks that  
192 the records in the custody or control of the Office of Legislative Auditor General that would  
193 reveal the name of a particular legislator who requests a legislative audit be maintained as  
194 protected records until the audit is completed and made public;  
195 (42) records that provide detail as to the location of an explosive, including a map or  
196 other document that indicates the location of:  
197 (a) a production facility; or  
198 (b) a magazine;  
199 (43) information contained in the database described in Section 62A-3-311.1; [~~and~~]  
200 (44) information contained in the Management Information System and Licensing  
201 Information System described in Title 62A, Chapter 4a, Child and Family Services[-]; and  
202 (45) information regarding National Guard operations or activities in support of the  
203 National Guard's federal mission.

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**Legislative Review Note**  
**as of 1-20-03 10:19 AM**

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

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0112**

**Government Records Protection for Federal Mission of National  
Guard**

*27-Jan-03*  
*10:42 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**