

**GOVERNMENT RECORDS ACCESS AND
MANAGEMENT ACT REVISIONS**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Douglas C. Aagard

LONG TITLE

General Description:

This bill modifies the Government Records Access and Management Act to address issues related to access to and classification of records.

Highlighted Provisions:

This bill:

- ▶ provides that a governmental entity is not required to manipulate electronic data to provide compilations, summaries, or other records not maintained by the governmental entity;

- ▶ requires governmental entities to charge fair market value for records under certain circumstances;

- ▶ allows for the sharing of private records with a private entity under a contract between the governmental entity and the private entity;

- ▶ provides for certain information to be a private record; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



63-2-201, as last amended by Chapter 191, Laws of Utah 2002

63-2-203, as last amended by Chapter 48, Laws of Utah 1999

63-2-206, as last amended by Chapters 63 and 63, Laws of Utah 2002

63-2-302, as last amended by Chapters 39, 252 and 298, Laws of Utah 2003

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

Section 1. Section **63-2-201** is amended to read:

63-2-201. Right to inspect records and receive copies of records.

(1) Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 63-2-203 and 63-2-204.

(2) All records are public unless otherwise expressly provided by statute.

(3) The following records are not public:

(a) records that are private, controlled, or protected under Sections 63-2-302, 63-2-302.5, 63-2-303, and 63-2-304; and

(b) records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

(4) Only those records specified in Section 63-2-302, 63-2-302.5, 63-2-303, or 63-2-304 may be classified private, controlled, or protected.

(5) (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Section 63-2-202, 63-2-206, or 63-2-302.5.

(b) A governmental entity may disclose records that are private under Subsection 63-2-302(2) or protected under Section 63-2-304 to persons other than those specified in Section 63-2-202 or 63-2-206 if the head of a governmental entity, or a designee, determines that there is no interest in restricting access to the record, or that the interests favoring access outweighs the interest favoring restriction of access.

(6) (a) The disclosure of records to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including records for

which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.

(b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

(7) A governmental entity shall provide a person with a certified copy of a record if:

(a) the person requesting the record has a right to inspect ~~[it]~~ the record;

(b) the person identifies the record with reasonable specificity; and

(c) the person pays the lawful fees.

(8) (a) A governmental entity is not required to create a record in response to a request~~[-]~~, including not being required to manipulate records in such a way as to create a record that the governmental entity does not otherwise maintain, including:

(i) a compilation of records; or

(ii) a summary of one or more records.

(b) Upon request, a governmental entity ~~[shall]~~ may provide ~~[a]~~ an existing record in a particular format if:

(i) the governmental entity is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and

(ii) the requester agrees to pay the governmental entity for ~~[its]~~ the governmental entity's costs incurred in providing the record in the requested format in accordance with Section 63-2-203.

(c) Nothing in this section requires a governmental entity to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

(9) If a person requests copies of more than 50 pages of records from a governmental entity, and, if the records are contained in files that do not contain records that are exempt from disclosure, the governmental entity may:

(a) provide the requester with the facilities for copying the requested records and require that the requester make the copies ~~[himself]~~; or

(b) (i) allow the requester to provide ~~[his]~~ the requester's own copying facilities and personnel to make the copies at the governmental entity's offices; and

(ii) waive the fees for copying the records.

(10) (a) A governmental entity that owns an intellectual property right and that offers the intellectual property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to be in the public interest.

(b) Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the intellectual property right.

(11) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of persons to inspect and receive copies of a record under this chapter.

Section 2. Section **63-2-203** is amended to read:

63-2-203. Fees.

(1) (a) ~~[A]~~ Except as provided in Subsection (1)(b), a governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of duplicating a record. ~~[This]~~

(b) Notwithstanding the other provisions in this section except when Subsection (4) applies, if a governmental entity determines that a requested compilation of records has a commercial value as compared to similar documents available in the market place, the governmental entity shall charge fair commercial value for providing the compilation of records to the person requesting the compilation of records.

(c) A fee charged under this section shall be approved by the governmental entity's executive officer.

(2) (a) ~~[When]~~ Subject to Subsections (2)(b) and (c), when a governmental entity ~~[compiles]~~ provides a record in a form other than that normally maintained by the governmental entity, the actual costs under this section may include the following:

~~[(a)]~~ (i) the cost of staff time for summarizing, compiling, or tailoring the record either into an organization or media to meet the person's request;

~~[(b)]~~ (ii) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request~~[- The hourly charge may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request; provided, however, that no charge may be made for the first quarter hour of staff time]; and~~

121 ~~[(c)]~~ (iii) in the case of fees for a record that is the result of computer output other than
122 word processing, the actual incremental cost of providing the electronic services and products
123 together with a reasonable portion of the costs associated with formatting or interfacing the
124 information for particular users, and the administrative costs as set forth in Subsections
125 (2)(a)(i) and ~~[(b)]~~ (ii).

126 (b) (i) An hourly charge for the cost of staff time may not exceed the salary of the
127 lowest paid employee who, in the discretion of the custodian of the record, has the necessary
128 skill and training to perform the request.

129 (ii) A charge may not be made for the first quarter hour of staff time.

130 (c) Subsection (1) and this Subsection (2) may not be interpreted as requiring a
131 governmental entity to manipulate records in such a way as to create a record that the
132 governmental entity does not otherwise maintain including:

133 (i) a compilation of records; or

134 (ii) a summary of one or more records.

135 (3) Fees shall be established as ~~[follows:]~~ provided in this Subsection (3).

136 (a) Governmental entities with fees established by the Legislature shall establish the
137 fees defined in Subsection (2), or other actual costs associated with this section through the
138 budget process. Governmental entities with fees established by the Legislature that are set on
139 the basis of cost may use the procedures of Section 63-38-3.2 to set fees until the Legislature
140 establishes fees through the budget process. A fee set by a governmental entity in accordance
141 with Section 63-38-3.2 expires on May 1, 1995.

142 (b) Political subdivisions shall establish fees by ordinance or written formal policy
143 adopted by the governing body.

144 (c) The judiciary shall establish fees by rules of the judicial council.

145 (4) A governmental entity may fulfill a record request without charge and is
146 encouraged to do so when ~~[it]~~ the governmental entity determines that:

147 (a) releasing the record primarily benefits the public rather than a person;

148 (b) the individual requesting the record is;

149 (i) the subject of the record[;]; or

150 (ii) an individual specified in Subsection 63-2-202(1) or (2); or

151 (c) (i) the requester's legal rights are directly implicated by the information in the

record~~;~~; and

(ii) the requester is impecunious.

(5) A governmental entity may not charge a fee for:

(a) reviewing a record to determine whether it is subject to disclosure, except as permitted by Subsection (2)~~(b)~~ (a)(i); or

(b) inspecting a record.

(6) (a) A person who believes that there has been an unreasonable denial of a fee waiver under Subsection (4) may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under Section 63-2-205.

(b) The adjudicative body hearing the appeal has the same authority when a fee waiver or reduction is denied as it has when the inspection of a public record is denied.

(7) (a) All fees received under this section by a governmental entity subject to Subsection (3)(a) shall be retained by the governmental entity as a dedicated credit.

(b) Those funds shall be used to recover the actual cost and expenses incurred by the governmental entity in providing the requested record or record series.

(8) (a) A governmental entity may require payment of past fees and future estimated fees before beginning to process a request if:

(i) fees are expected to exceed \$50~~;~~; or ~~(i)~~

(ii) the requester has not paid fees from previous requests.

(b) Any prepaid amount in excess of fees due shall be returned to the requester.

(9) This section does not alter, repeal, or reduce fees established by other statutes or legislative acts.

(10) (a) Notwithstanding Subsection (3)(b), fees for voter registration records shall be set as provided in this Subsection (10).

(b) The lieutenant governor shall:

(i) after consultation with county clerks, establish uniform fees for voter registration and voter history records that meet the requirements of this section; and

(ii) obtain legislative approval of those fees by following the procedures and requirements of Section 63-38-3.2.

Section 3. Section **63-2-206** is amended to read:

63-2-206. Sharing records.

(1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:

(a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;

(b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;

(c) is authorized by state statute to conduct an audit and the record is needed for that purpose; or

(d) is one that collects information for presentence, probationary, or parole purposes.

(2) A governmental entity may provide a private or controlled record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:

(a) that the record or record series is necessary to the performance of the governmental entity's duties and functions;

(b) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and

(c) that the use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series.

(3) A governmental entity may provide a record or record series that is protected under Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if:

(a) the record is necessary to the performance of the requesting entity's duties and functions; or

(b) the record will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained.

(4) (a) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:

(i) is entitled by law to inspect the record;

(ii) is required to inspect the record as a condition of participating in a state or federal

program or for receiving state or federal funds; or

(iii) is an entity described in Subsection (1)(a), (b), (c), or (d).

(b) Subsection (4)(a)(iii) applies only if the record is a record described in Subsection 63-2-304(4).

(5) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, or a foreign government, the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

(6) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1), (2), and (3) without complying with the procedures of Subsection (2) or (5) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

(7) (a) Subject to Subsection (7)(b), a governmental entity receiving a record under this section is subject to the same restrictions on disclosure of the record as the originating entity.

(b) The classification of a record already held by a governmental entity and the applicable restrictions on disclosure of that record are not affected by the governmental entity's receipt under this section of a record with a different classification that contains information that is also included in the previously held record.

(8) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.

(9) The following records may not be shared under this section:

(a) records held by the Division of Oil, Gas and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas and Mining; and

(b) records of publicly funded libraries as described in Subsection 63-2-302(1)(c).

(10) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

(11) (a) A governmental entity may disclose a private record to a private entity that the governmental entity could not otherwise disclose under this chapter:

(i) at the discretion of the chief administrative officer of the governmental entity; and

(ii) only if:

(A) the chief administrative officer determines that disclosure will provide a significant public benefit to the governmental entity or its citizens;

(B) disclosure is pursuant to a contractual arrangement between the governmental entity and the private entity; and

(C) the private entity by contract agrees that, except when otherwise provided by the contract, the private entity shall:

(I) maintain the privacy of the record; and

(II) prevent disclosure of the record.

(b) The contract described in Subsection (11)(a) may be exclusive or nonexclusive:

(i) depending on the nature of the services provided under the contract; and

(ii) at the discretion of the chief administrative officer of the governmental entity.

Section 4. Section **63-2-302** is amended to read:

63-2-302. Private records.

(1) The following records are private:

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

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

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

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

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

276 (i) if prior to the meeting, the chair of the committee determines release of the records:
277 (A) reasonably could be expected to interfere with the investigation undertaken by the
278 committee; or
279 (B) would create a danger of depriving a person of a right to a fair proceeding or
280 impartial hearing; and
281 (ii) after the meeting, if the meeting was closed to the public;
282 (f) employment records concerning a current or former employee of, or applicant for
283 employment with, a governmental entity that would disclose that individual's:
284 (i) home address[;];
285 (ii) home telephone number[;];
286 (iii) Social Security number[;];
287 (iv) birthdate;
288 (v) insurance coverage[;];
289 (vi) marital status[;]; or
290 (vii) payroll deductions;
291 (g) records or parts of records under Section 63-2-302.5 that a current or former
292 employee identifies as private according to the requirements of that section;
293 (h) that part of a record indicating a person's Social Security number or federal
294 employer identification number if provided under Section 31A-23a-104, 31A-26-202,
295 58-1-301, 61-1-4, or 61-2-6;
296 (i) that part of a voter registration record identifying a voter's driver license or
297 identification card number, Social Security number, or last four digits of the Social Security
298 number;
299 (j) a record that:
300 (i) contains information about an individual;
301 (ii) is voluntarily provided by the individual; and
302 (iii) goes into an electronic database that:
303 (A) is designated by and administered under the authority of the Chief Information
304 Officer; and
305 (B) acts as a repository of information about the individual that can be electronically
306 retrieved and used to facilitate the individual's online interaction with a state agency;

(k) information provided to the Commissioner of Insurance under Subsection 31A-23a-115(2)(a); ~~and~~

(l) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems~~[-]; and~~

(m) a record concerning any individual that would disclose both:

(i) that individual's name; and

(ii) that individual's:

(A) home address;

(B) home telephone number;

(C) Social Security number;

(D) birthdate; or

(E) marital status.

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

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection(1)(b);

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

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

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

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

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

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

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it~~[-]; and~~

(f) records concerning an individual that disclose personal status information such as

338 race, religion, or disability, but not including records that are classified as private under
339 Subsection (1)(b).

340 (3) (a) As used in this Subsection (3), "medical records" means:

341 (i) medical reports[;];

342 (ii) records[;];

343 (iii) statements[;];

344 (iv) history[;];

345 (v) diagnosis[;];

346 (vi) condition[;];

347 (vii) treatment[;]; and

348 (viii) evaluation.

349 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
350 doctors, or affiliated entities are not private records or controlled records under Section
351 63-2-303 when the records are sought:

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

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

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

Legislative Review Note

as of 2-5-04 10:34 AM

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

Office of Legislative Research and General Counsel

State Impact

The State Division of Archives carries the responsibility for training state agencies and local governments in appropriate classification of records. Provisions in this bill are significant enough to require extensive training. The Division of Archives is down approximately 3.5 actual FTE since FY 2001. The Division would need one FTE to provide the training required by this bill.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$65,000	\$65,000	\$0	\$0
TOTAL	\$65,000	\$65,000	\$0	\$0

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst