

**PROTECTION OF GOVERNMENT RECORDS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Gregory S. Bell**

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**LONG TITLE**

**General Description:**

This bill addresses the treatment of records including those related to institutions within the state system of higher education.

**Highlighted Provisions:**

This bill:

▶ defines terms;

**§→ ▶ addresses what information must be disclosed upon receipt of a written request for a reasonably identifiable record; ←§**

▶ addresses protected records related to an institution within the state system of higher education;

▶ provides a process for a sponsor of research at an institution within the state system of higher education to file a written claim of business confidentiality including providing certain notice requirements;

▶ addresses how business confidentiality claims are treated; and

▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53B-16-301**, as enacted by Chapter 280, Laws of Utah 1992

**§→ 53B-16-302, as last amended by Chapter 280, Laws of Utah 1992 ←§**

**53B-16-304**, as enacted by Chapter 280, Laws of Utah 1992



- 28           **63-2-103**, as last amended by Chapter 78, Laws of Utah 2002
- 29           **63-2-202**, as last amended by Chapter 298, Laws of Utah 2003
- 30           **63-2-304**, as last amended by Chapters 223, 299 and 358, Laws of Utah 2004
- 31           **63-2-308**, as last amended by Chapter 280, Laws of Utah 1992
- 32           **63-2-403**, as last amended by Chapter 245, Laws of Utah 1999

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

35           Section 1. Section **53B-16-301** is amended to read:

36           **53B-16-301. Definitions.**

37           As used in this part:

38           (1) "Person" means:

39           (a) a federal, state, or local governmental entity;

40           (i) that sponsors sponsored research; or

41           (ii) participates in a technology transfer;

42           (b) an individual;

43           (c) a nonprofit or profit corporation;

44           (d) a partnership;

45           (e) a sole proprietorship; or

46           (f) other type of business organization.

47           (2) "Public institution of higher education" means an institution within the state system  
48 of higher education defined in Section 53B-1-102.

49           ~~[(1)]~~ (3) "Restricted record" means a record that is restricted as provided by Section  
50 53B-16-303.

51           ~~[(2)]~~ (4) "Sponsored research" refers to ~~[basic or applied]~~ research, training, and other  
52 sponsored activities as defined by the federal Executive Office of the President, Office of  
53 Management and Budget:

54           (a) conducted by a public institution of higher education through an office responsible  
55 for sponsored projects or programs; and

56           (b) funded or otherwise supported by an external ~~[persons or entities]~~ person that is not  
57 created or controlled by the public institution of higher education.

58           ~~[(3)]~~ (5) "Technology transfer" refers to transferring information, commercializing

59 research, or providing technical assistance between a public institution of higher education and  
60 external persons [~~or entities~~] for the purpose of economic development.

60a **§→ Section 2. Section 53B-16-302 is amended to read:**

60b **53B-16-302. Records that may be classified as restricted.**

60c **A public institution of higher education may classify only the following records**  
60d **as restricted:**

60e **(1) that portion of a technology transfer record or sponsored research record to**  
60f **which access must be restricted for the purpose of securing and maintaining proprietary**  
60g **protection of intellectual property rights, including but not limited to patents, copyrights,**  
60h **trademarks, and trade secrets; or**

60i **(2) that portion of a technology transfer record or sponsored research record to**  
60j **which access is restricted for competitive or proprietary purposes, as a condition of actual or**  
60k **potential participation in a sponsored research or technology transfer agreement; provided,**  
60l **however, that upon receipt of a written request for a reasonably identifiable record, the public**  
60m **institution of higher education shall disclose:**

60n **(a) prior to a memorandum of intent to contract or an agreement in principle**  
60o **between the parties:**

60p **(i) the names of the parties, or, if the disclosure of names would cause**  
60q **competitive harm, a general description of the type of parties negotiating the technology**  
60r **transfer or sponsored research agreement; and**

60s **(ii) a general description of the nature of the technology transfer or sponsored**  
60t **research under consideration, excluding proprietary or competitive information; or**

60u **(b) after a memorandum of intent to contract or an agreement in principle**  
60v **between the parties:**

60w **(i) the names of the parties involved in the technology transfer or sponsored**  
60x **research;**

60y **(ii) a general description of the nature of the technology transfer or sponsored research to be**  
60z **conducted, excluding proprietary or competitive information; and**

60aa **[ ~~(ii)~~ (iii) records of the technology transfer or sponsored research to be**  
60ab **conducted, excluding those portions of records to which access is limited under this part or**  
60ac **Title 63, Chapter 2, Government Records Access and Management Act. ←§**

61 **Section ~~§~~[2] (3) ←§ . Section 53B-16-304 is amended to read:**

62 **53B-16-304. Business confidentiality claims.**

63 **(1) (a) Any person who provides to [an] a public institution of higher education a**  
64 **record that [he] the person believes should be protected under [Subsections 63-2-304(1) or (2)**  
65 **or] a provision listed in Subsection 63-2-308(1)(b)(i), restricted under Section 53B-16-302, or**

66 both protected under a provision listed in Subsection 63-2-308(1)(b)(i) and restricted under  
 67 Section 53B-16-302, shall provide [with the record] the public institution of higher education:

68 (i) a written claim of business confidentiality; and

69 (ii) a concise statement of reasons supporting the claim[~~, provided that~~] of business  
 70 confidentiality.

71 (b) The person described in Subsection (1)(a) shall make the filing at the  
 72 commencement of:

73 (i) the sponsored research project; or

74 (ii) the technology transfer process.

75 (c) A claim of business confidentiality submitted under this Subsection (1) shall cover  
 76 all protected and restricted records exchanged during the:

77 (i) sponsored research project; or

78 (ii) technology transfer process.

79 (2) The inadvertent failure to make a legally adequate claim of business confidentiality  
 80 at the time [the record is provided to the institution shall] required by Subsection (1) does not  
 81 prejudice the claimant's right to make a legally adequate claim at a [later] different time before  
 82 disclosure of the record.

83 Section ~~§~~ → [3] 4 ← ~~§~~ . Section **63-2-103** is amended to read:

84 **63-2-103. Definitions.**

85 As used in this chapter:

86 (1) "Audit" means:

87 (a) a systematic examination of financial, management, program, and related records  
 88 for the purpose of determining the fair presentation of financial statements, adequacy of  
 89 internal controls, or compliance with laws and regulations; or

90 (b) a systematic examination of program procedures and operations for the purpose of  
91 determining their effectiveness, economy, efficiency, and compliance with statutes and  
92 regulations.

93 (2) "Chronological logs" mean the regular and customary summary records of law  
94 enforcement agencies and other public safety agencies that show:

95 (a) the time and general nature of police, fire, and paramedic calls made to the agency;  
96 and

97 (b) any arrests or jail bookings made by the agency.

98 (3) "Classification," "classify," and their derivative forms mean determining whether a  
99 record series, record, or information within a record is public, private, controlled, protected, or  
100 exempt from disclosure under Subsection 63-2-201(3)(b).

101 (4) (a) "Computer program" means:

102 (i) a series of instructions or statements that permit the functioning of a computer  
103 system in a manner designed to provide storage, retrieval, and manipulation of data from the  
104 computer system[-]; and

105 (ii) any associated documentation and source material that explain how to operate the  
106 computer program.

107 (b) "Computer program" does not mean:

108 (i) the original data, including numbers, text, voice, graphics, and images;

109 (ii) analysis, compilation, and other manipulated forms of the original data produced by  
110 use of the program; or

111 (iii) the mathematical or statistical formulas, [~~f~~excluding the underlying mathematical  
112 algorithms contained in the program[~~g~~], that would be used if the manipulated forms of the  
113 original data were to be produced manually.

114 (5) (a) "Contractor" means:

115 (i) any person who contracts with a governmental entity to provide goods or services  
116 directly to a governmental entity; or

117 (ii) any private, nonprofit organization that receives funds from a governmental entity.

118 (b) "Contractor" does not mean a private provider.

119 (6) "Controlled record" means a record containing data on individuals that is controlled  
120 as provided by Section 63-2-303.

121 (7) "Designation," "designate," and their derivative forms mean indicating, based on a  
122 governmental entity's familiarity with a record series or based on a governmental entity's  
123 review of a reasonable sample of a record series, the primary classification that a majority of  
124 records in a record series would be given if classified and the classification that other records  
125 typically present in the record series would be given if classified.

126 (8) "Explosive" means a chemical compound, device, or mixture:

127 (a) commonly used or intended for the purpose of producing an explosion; and

128 (b) that contains oxidizing or combustive units or other ingredients in proportions,  
129 quantities, or packing so that:

130 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the  
131 compound or mixture may cause a sudden generation of highly heated gases; and

132 (ii) the resultant gaseous pressures are capable of:

133 (A) producing destructive effects on contiguous objects; or

134 (B) causing death or serious bodily injury.

135 (9) "Government audit agency" means any governmental entity that conducts audits.

136 (10) (a) "Governmental entity" means:

137 (i) executive department agencies of the state, the offices of the governor, lieutenant  
138 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,  
139 the Board of Examiners, the National Guard, the Career Service Review Board, the State Board  
140 of Education, the State Board of Regents, and the State Archives;

141 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal  
142 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative  
143 committees, except any political party, group, caucus, or rules or sifting committee of the  
144 Legislature;

145 (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar  
146 administrative units in the judicial branch;

147 (iv) any state-funded institution of higher education or public education; or

148 (v) any political subdivision of the state, but, if a political subdivision has adopted an  
149 ordinance or a policy relating to information practices pursuant to Section 63-2-701, this  
150 chapter shall apply to the political subdivision to the extent specified in Section 63-2-701 or as  
151 specified in any other section of this chapter that specifically refers to political subdivisions.

152 (b) "Governmental entity" also means every office, agency, board, bureau, committee,  
153 department, advisory board, or commission of the entities listed in Subsection (10)(a) that is  
154 funded or established by the government to carry out the public's business.

155 (11) "Gross compensation" means every form of remuneration payable for a given  
156 period to an individual for services provided including salaries, commissions, vacation pay,  
157 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any  
158 similar benefit received from the individual's employer.

159 (12) "Individual" means a human being.

160 (13) (a) "Initial contact report" means an initial written or recorded report, however  
161 titled, prepared by peace officers engaged in public patrol or response duties describing official  
162 actions initially taken in response to either a public complaint about or the discovery of an  
163 apparent violation of law, which report may describe:

164 (i) the date, time, location, and nature of the complaint, the incident, or offense;

165 (ii) names of victims;

166 (iii) the nature or general scope of the agency's initial actions taken in response to the  
167 incident;

168 (iv) the general nature of any injuries or estimate of damages sustained in the incident;

169 (v) the name, address, and other identifying information about any person arrested or  
170 charged in connection with the incident; or

171 (vi) the identity of the public safety personnel, except undercover personnel, or  
172 prosecuting attorney involved in responding to the initial incident.

173 (b) Initial contact reports do not include follow-up or investigative reports prepared  
174 after the initial contact report. However, if the information specified in Subsection (13)(a)  
175 appears in follow-up or investigative reports, it may only be treated confidentially if it is  
176 private, controlled, protected, or exempt from disclosure under Subsection 63-2-201(3)(b).

177 (14) "Person" means ~~any~~:

178 (a) an individual;

179 (b) a nonprofit or profit corporation;

180 (c) a partnership;

181 (d) a sole proprietorship; or

182 (e) other type of business organization.

183 (15) "Private provider" means any person who contracts with a governmental entity to  
184 provide services directly to the public.

185 (16) "Private record" means a record containing data on individuals that is private as  
186 provided by Section 63-2-302.

187 (17) "Protected record" means a record that is classified protected as provided by  
188 Section 63-2-304.

189 (18) "Public record" means a record that is not private, controlled, or protected and that  
190 is not exempt from disclosure as provided in Subsection 63-2-201(3)(b).

191 (19) (a) "Record" means all books, letters, documents, papers, maps, plans,  
192 photographs, films, cards, tapes, recordings, electronic data, or other documentary materials  
193 regardless of physical form or characteristics:

194 (i) which are prepared, owned, received, or retained by a governmental entity or  
195 political subdivision; and

196 (ii) where all of the information in the original is reproducible by photocopy or other  
197 mechanical or electronic means.

198 (b) "Record" does not mean:

199 (i) temporary drafts or similar materials prepared for the originator's personal use or  
200 prepared by the originator for the personal use of an individual for whom ~~he~~ the originator is  
201 working;

202 (ii) materials that are legally owned by an individual in ~~his~~ the individual's private  
203 capacity;

204 (iii) materials to which access is limited by the laws of copyright or patent unless the  
205 copyright or patent is owned by a governmental entity or political subdivision;

206 (iv) proprietary software;

207 (v) junk mail or commercial publications received by a governmental entity or an  
208 official or employee of a governmental entity;

209 (vi) books and other materials that are cataloged, indexed, or inventoried and contained  
210 in the collections of libraries open to the public, regardless of physical form or characteristics  
211 of the material;

212 (vii) daily calendars and other personal notes prepared by the originator for the  
213 originator's personal use or for the personal use of an individual for whom ~~he~~ the originator is



214 working;

215 (viii) computer programs as defined in Subsection (4) that are developed or purchased  
216 by or for any governmental entity for its own use; or

217 (ix) notes or internal memoranda prepared as part of the deliberative process by a  
218 member of the judiciary, an administrative law judge, a member of the Board of Pardons and  
219 Parole, or a member of any other body charged by law with performing a quasi-judicial  
220 function.

221 (20) "Record series" means a group of records that may be treated as a unit for  
222 purposes of designation, description, management, or disposition.

223 (21) "Records committee" means the State Records Committee created in Section  
224 63-2-501.

225 (22) "Records officer" means the individual appointed by the chief administrative  
226 officer of each governmental entity, or the political subdivision to work with state archives in  
227 the care, maintenance, scheduling, designation, classification, disposal, and preservation of  
228 records.

229 (23) "Schedule," "scheduling," and their derivative forms mean the process of  
230 specifying the length of time each record series should be retained by a governmental entity for  
231 administrative, legal, fiscal, or historical purposes and when each record series should be  
232 transferred to the state archives or destroyed.

233 (24) "Sponsored research" means research, training, and other sponsored activities as  
234 defined by the federal Executive Office of the President, Office of Management and Budget:

235 (a) conducted:

236 (i) by an institution within the state system of higher education defined in Section  
237 53B-1-102; and

238 (ii) through an office responsible for sponsored projects or programs; and

239 (b) funded or otherwise supported by an external:

240 (i) person that is not created or controlled by the institution within the state system of  
241 higher education; or

242 (ii) federal, state, or local governmental entity.

243 [~~24~~] (25) "State archives" means the Division of Archives and Records Service  
244 created in Section 63-2-901.

245            [~~(25)~~] (26) "State archivist" means the director of the state archives.

246            [~~(26)~~] (27) "Summary data" means statistical records and compilations that contain  
247 data derived from private, controlled, or protected information but that do not disclose private,  
248 controlled, or protected information.

249            Section 4. Section **63-2-202** is amended to read:

250            **63-2-202. Access to private, controlled, and protected documents.**

251            (1) Upon request, a governmental entity shall disclose a private record to:

252            (a) the subject of the record;

253            (b) the parent or legal guardian of an unemancipated minor who is the subject of the  
254 record;

255            (c) the legal guardian of a legally incapacitated individual who is the subject of the  
256 record;

257            (d) any other individual who:

258            (i) has a power of attorney from the subject of the record;

259            (ii) submits a notarized release from the subject of the record or his legal representative  
260 dated no more than 90 days before the date the request is made; or

261            (iii) if the record is a medical record described in Subsection 63-2-302(1)(b), is a health  
262 care provider, as defined in Section 26-33a-102, if releasing the record or information in the  
263 record is consistent with normal professional practice and medical ethics; or

264            (e) any person to whom the record must be provided pursuant to:

265            (i) court order as provided in Subsection (7);<sub>2</sub> or

266            (ii) a legislative subpoena as provided in Title 36, Chapter 14.

267            (2) (a) Upon request, a governmental entity shall disclose a controlled record to:

268            (i) a physician, psychologist, certified social worker, insurance provider or producer, or  
269 a government public health agency upon submission of:

270            (A) a release from the subject of the record that is dated no more than 90 days prior to  
271 the date the request is made;<sub>2</sub> and

272            (B) a signed acknowledgment of the terms of disclosure of controlled information as  
273 provided by Subsection (2)(b); and

274            (ii) any person to whom the record must be disclosed pursuant to:

275            (A) a court order as provided in Subsection (7);<sub>2</sub> or

276 (B) a legislative subpoena as provided in Title 36, Chapter 14.

277 (b) A person who receives a record from a governmental entity in accordance with  
278 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,  
279 including the subject of the record.

280 (3) If there is more than one subject of a private or controlled record, the portion of the  
281 record that pertains to another subject shall be segregated from the portion that the requester is  
282 entitled to inspect.

283 (4) Upon request, a governmental entity shall disclose a protected record to:

284 (a) the person who submitted the record;

285 (b) any other individual who:

286 (i) has a power of attorney from all persons, governmental entities, or political  
287 subdivisions whose interests were sought to be protected by the protected classification; or

288 (ii) submits a notarized release from all persons, governmental entities, or political  
289 subdivisions whose interests were sought to be protected by the protected classification or from  
290 their legal representatives dated no more than 90 days prior to the date the request is made;

291 (c) any person to whom the record must be provided pursuant to:

292 (i) a court order as provided in Subsection (7); or

293 (ii) a legislative subpoena as provided in Title 36, Chapter 14; or

294 (d) the owner of a mobile home park, subject to the conditions of Subsection  
295 41-1a-116(5).

296 (5) A governmental entity may disclose a private, controlled, or protected record to  
297 another governmental entity, political subdivision, another state, the United States, or a foreign  
298 government only as provided by Section 63-2-206.

299 (6) Before releasing a private, controlled, or protected record, the governmental entity  
300 shall obtain evidence of the requester's identity.

301 (7) A governmental entity shall disclose a record pursuant to the terms of a court order  
302 signed by a judge from a court of competent jurisdiction, provided that:

303 (a) the record deals with a matter in controversy over which the court has jurisdiction;

304 (b) the court has considered the merits of the request for access to the record; and

305 (c) the court has considered and, where appropriate, limited the requester's use and  
306 further disclosure of the record in order to protect;

307 (i) privacy interests in the case of private or controlled records[;];  
308 (ii) business confidentiality interests in the case of records protected under  
309 [Subsections] Subsection 63-2-304(1) [~~and~~], (2), (40)(a)(ii), or (40)(a)(vi); and  
310 (iii) privacy interests or the public interest in the case of other protected records;  
311 (d) to the extent the record is properly classified private, controlled, or protected, the  
312 interests favoring access, considering limitations thereon, outweigh the interests favoring  
313 restriction of access; and  
314 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection  
315 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.  
316 (8) (a) A governmental entity may disclose or authorize disclosure of private or  
317 controlled records for research purposes if the governmental entity:  
318 (i) determines that the research purpose cannot reasonably be accomplished without  
319 use or disclosure of the information to the researcher in individually identifiable form;  
320 (ii) determines that:  
321 (A) the proposed research is bona fide[;]; and [~~that~~]  
322 (B) the value of the research outweighs the infringement upon personal privacy;  
323 (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of  
324 the records; and  
325 (B) requires the removal or destruction of the individual identifiers associated with the  
326 records as soon as the purpose of the research project has been accomplished;  
327 (iv) prohibits the researcher from:  
328 (A) disclosing the record in individually identifiable form, except as provided in  
329 Subsection (8)(b)[;]; or [~~from~~]  
330 (B) using the record for purposes other than the research approved by the governmental  
331 entity; and  
332 (v) secures from the researcher a written statement of [~~his~~] the researcher's  
333 understanding of and agreement to the conditions of this Subsection (8) and [~~his~~] the  
334 researcher's understanding that violation of the terms of this Subsection (8) may subject [~~him~~]  
335 the researcher to criminal prosecution under Section 63-2-801.  
336 (b) A researcher may disclose a record in individually identifiable form if the record is  
337 disclosed for the purpose of auditing or evaluating the research program and no subsequent use

338 or disclosure of the record in individually identifiable form will be made by the auditor or  
339 evaluator except as provided by this section.

340 (c) A governmental entity may require indemnification as a condition of permitting  
341 research under this Subsection (8).

342 (9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6), a governmental entity may  
343 disclose to persons other than those specified in this section records that are:

344 (i) private under Section 63-2-302[;]; or

345 (ii) protected under Section 63-2-304 [~~to persons other than those specified in this~~  
346 ~~section~~] subject to Section 63-2-308 if a claim for business confidentiality has been made under  
347 Section 63-2-308.

348 (b) Under Subsection 63-2-403(11)(b), the [~~Records Committee~~] records committee  
349 may require the disclosure to persons other than those specified in this section of records that  
350 are:

351 (i) private under Section 63-2-302[;];

352 (ii) controlled under Section 63-2-303[;]; or

353 (iii) protected under Section 63-2-304 [~~to persons other than those specified in this~~  
354 ~~section~~] subject to Section 63-2-308 if a claim for business confidentiality has been made under  
355 Section 63-2-308.

356 (c) Under Subsection 63-2-404(8), the court may require the disclosure of records that  
357 are private under Section 63-2-302, controlled under Section 63-2-303, or protected under  
358 Section 63-2-304 to persons other than those specified in this section.

359 Section 5. Section **63-2-304** is amended to read:

360 **63-2-304. Protected records.**

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

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

364 (2) commercial information or nonindividual financial information obtained from a  
365 person if:

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

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

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

373 (3) commercial or financial information acquired or prepared by a governmental entity  
374 to the extent that disclosure would lead to financial speculations in currencies, securities, or  
375 commodities that will interfere with a planned transaction by the governmental entity or cause  
376 substantial financial injury to the governmental entity or state economy;

377 (4) records the disclosure of which could cause commercial injury to, or confer a  
378 competitive advantage upon a potential or actual competitor of, a commercial project entity as  
379 defined in Subsection 11-13-103(4);

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

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

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

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

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

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

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

398 (e) the property under consideration for public acquisition is a single family residence  
399 and the governmental entity seeking to acquire the property has initiated negotiations to acquire

400 the property as required under Section 78-34-4.5;

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

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

407 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of  
408 the value of the subject property have already been disclosed to persons not employed by or  
409 under a duty of confidentiality to the entity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

459 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
460 Office of Legislative Research and General Counsel is a public document unless a legislator  
461 asks that the records requesting the legislation be maintained as protected records until such



462 time as the legislator elects to make the legislation or course of action public;

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

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

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

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

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

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

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

480 (28) records of [~~a public institution of higher education~~] an institution within the state  
481 system of higher education defined in Section 53B-1-102 regarding tenure evaluations,  
482 appointments, applications for admissions, retention decisions, and promotions, which could be  
483 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public  
484 Meetings, provided that records of the final decisions about tenure, appointments, retention,  
485 promotions, or those students admitted, may not be classified as protected under this section;

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

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

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

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

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

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

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

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

513 (37) the name of a donor or a prospective donor to a governmental entity, including [a  
514 ~~public institution of higher education~~ an institution within the state system of higher education  
515 defined in Section 53B-1-102, and other information concerning the donation that could  
516 reasonably be expected to reveal the identity of the donor, provided that:

517 (a) the donor requests anonymity in writing;

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

520 (c) except for [~~public institutions of higher education~~ an institution within the state  
521 system of higher education defined in Section 53B-1-102, the governmental unit to which the  
522 donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has  
523 no regulatory or legislative authority over the donor, a member of [~~his~~ the donor's immediate

524 family, or any entity owned or controlled by the donor or [~~his~~] the donor's immediate family;

525 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and  
526 73-18-13;

527 (39) a notification of workers' compensation insurance coverage described in Section  
528 34A-2-205;

529 (40) (a) the following records of [~~a public institution of education~~] an institution within  
530 the state system of higher education defined in Section 53B-1-102, which have been developed,  
531 discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of  
532 the institution:

533 (i) unpublished lecture notes;

534 (ii) unpublished [~~research~~] notes [~~and~~], data, and information:

535 (A) relating to ~~§~~ [sponsored] ~~←§~~ research; and

536 (B) of:

537 (I) the institution within the state system of higher education defined in Section  
538 53B-1-102; or

539 (II) a sponsor of sponsored research;

540 (iii) unpublished manuscripts;

541 (iv) creative works in process;

542 (v) scholarly correspondence; and

543 (vi) confidential information contained in research proposals; ~~§~~ →

543a **(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information**

543b **required pursuant to Subsection 53B-16-302(2)(a) or (b);** ~~←§~~  and

544 ~~§~~ → [~~(b)~~] (c) ~~←§~~  Subsection (40)(a) may not be construed to affect the ownership of a record;

545 (41) (a) records in the custody or control of the Office of Legislative Auditor General  
546 that would reveal the name of a particular legislator who requests a legislative audit prior to the  
547 date that audit is completed and made public; and

548 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the  
549 Office of the Legislative Auditor General is a public document unless the legislator asks that  
550 the records in the custody or control of the Office of Legislative Auditor General that would  
551 reveal the name of a particular legislator who requests a legislative audit be maintained as  
552 protected records until the audit is completed and made public;

553 (42) records that provide detail as to the location of an explosive, including a map or  
554 other document that indicates the location of:

- 555 (a) a production facility; or  
 556 (b) a magazine;  
 557 (43) information contained in the database described in Section 62A-3-311.1;  
 558 (44) information contained in the Management Information System and Licensing  
 559 Information System described in Title 62A, Chapter 4a, Child and Family Services;  
 560 (45) information regarding National Guard operations or activities in support of the  
 561 National Guard's federal mission;  
 562 (46) records provided by any pawnbroker or pawnshop to a law enforcement agency in  
 563 compliance with Title 13, Chapter 32a, Pawnshop Transaction Information Act; and  
 564 (47) information regarding food security, risk, and vulnerability assessments performed  
 565 by the Department of Agriculture and Food.

566 Section 6. Section **63-2-308** is amended to read:

567 **63-2-308. Confidentiality claims.**

568 (1) (a) (i) Any person who provides to a governmental entity a record that ~~[he]~~ the  
 569 person believes should be protected under Subsection 63-2-304 (1) or (2) or both Subsections  
 570 63-2-304(1) and (2) shall provide with the record:

571 (A) a written claim of business confidentiality; and

572 (B) a concise statement of reasons supporting the claim of business confidentiality.

573 (ii) Any of the following who provides to an institution within the state system of  
 574 higher education defined in Section 53B-1-102 a record that the person or governmental entity  
 575 believes should be protected under Subsection 63-2-304(40)(a)(ii) or (vi) or both Subsections  
 576 63-2-304(40)(a)(ii) and (vi) shall provide the institution within the state system of higher  
 577 education a written claim of business confidentiality in accordance with Section 53B-16-304:

578 (A) a person;

579 (B) a federal governmental entity;

580 (C) a state governmental entity; or

581 (D) a local governmental entity.

582 (b) ~~[The claimant]~~ A person or governmental entity who complies with this Subsection  
 583 (1) shall be notified by the governmental entity to whom the request for a record is made if:

584 (i) a record claimed to be protected under [~~Subsection 63-2-304 (1) or (2)] one of the~~  
 585 following is classified public [~~or if~~];

- 586           (A) Subsection 63-2-304(1);  
 587           (B) Subsection 63-2-304(2);  
 588           (C) Subsection 63-2-304(40)(a)(ii);  
 589           (D) Subsection 63-2-304(40)(a)(vi); or  
 590           (E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D);

591 or

592           (ii) the governmental entity to whom the request for a record is made determines that  
 593 the record claimed to be protected under a provision listed in Subsection (1)(b)(i) should be  
 594 released after balancing interests under Subsection 63-2-201(5)(b) or Subsection 63-2-401(6).

595           (2) Except as provided by court order, the governmental entity to whom the request for  
 596 a record is made may not disclose [~~records~~] a record claimed to be protected under [~~Subsection~~  
 597 ~~63-2-304(1) or (2)~~] a provision listed in Subsection (1)(b)(i) but which [~~it~~] the governmental  
 598 entity or records committee determines should be [~~classified public~~] disclosed until the period  
 599 in which to bring an appeal expires or the end of the appeals process, including judicial appeal.  
 600 This Subsection (2) does not apply where the claimant, after notice, has waived the claim by  
 601 not appealing or intervening before the records committee.

602           (3) Disclosure or acquisition of information under this chapter does not constitute  
 603 misappropriation under Subsection 13-24-2(2).

604           Section 7. Section **63-2-403** is amended to read:

605           **63-2-403. Appeals to the records committee.**

606           (1) A petitioner, including an aggrieved person who did not participate in the appeal to  
 607 the governmental entity's chief administrative officer, may appeal to the records committee by  
 608 filing a notice of appeal with the executive secretary no later than:

609           (a) 30 days after the chief administrative officer of the governmental entity has granted  
 610 or denied the records request in whole or in part, including a denial under Subsection  
 611 63-2-204(7);

612           (b) 45 days after the original request for records if:

613           (i) the circumstances described in Subsection 63-2-401(1)(b) occur; and

614           (ii) the chief administrative officer failed to make a determination under Section  
 615 63-2-401.

616           (2) The notice of appeal shall contain the following information:

- 617 (a) the petitioner's name, mailing address, and daytime telephone number;
- 618 (b) a copy of any denial of the records request; and
- 619 (c) the relief sought.
- 620 (3) The petitioner may file a short statement of facts, reasons, and legal authority in
- 621 support of the appeal.
- 622 (4) (a) Except as provided in Subsection (4)(b), no later than three business days after
- 623 receiving a notice of appeal, the executive secretary of the records committee shall:
- 624 (i) schedule a hearing for the records committee to discuss the appeal at the next
- 625 regularly scheduled committee meeting falling at least 14 days after the date the notice of
- 626 appeal is filed but no longer than 45 days after the date the notice of appeal was filed
- 627 [~~provided, however,~~ except that the records committee may schedule an expedited hearing
- 628 upon application of the petitioner and good cause shown;
- 629 (ii) send a copy of the notice of hearing to the petitioner; and
- 630 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing
- 631 to:
- 632 (A) each member of the records committee;
- 633 (B) the records officer and the chief administrative officer of the governmental entity
- 634 from which the appeal originated;
- 635 (C) any person who made a business confidentiality claim under Section 63-2-308 for a
- 636 record that is the subject of the appeal; and
- 637 (D) all persons who participated in the proceedings before the governmental entity's
- 638 chief administrative officer.
- 639 (b) (i) The executive secretary of the records committee may decline to schedule a
- 640 hearing if the record series that is the subject of the appeal has been found by the committee in
- 641 a previous hearing involving the same government entity to be appropriately classified as
- 642 private, controlled, or protected.
- 643 (ii) (A) If the executive secretary of the records committee declines to schedule a
- 644 hearing, the executive secretary of the records committee shall send a notice to the petitioner
- 645 indicating that the request for hearing has been denied and the reason for the denial.
- 646 (B) The committee shall make rules to implement this section as provided by Title 63,
- 647 Chapter 46a, Utah Administrative Rulemaking Act.

648 (5) (a) A written statement of facts, reasons, and legal authority in support of the  
649 governmental entity's position must be submitted to the executive secretary of the records  
650 committee not later than five business days before the hearing.

651 (b) The governmental entity shall send a copy of the written statement to the petitioner  
652 by first class mail, postage prepaid. The executive secretary shall forward a copy of the written  
653 statement to each member of the records committee.

654 (6) (a) No later than ten business days after the notice of appeal is sent by the executive  
655 secretary, a person whose legal interests may be substantially affected by the proceeding may  
656 file a request for intervention before the records committee.

657 (b) Any written statement of facts, reasons, and legal authority in support of the  
658 intervener's position shall be filed with the request for intervention.

659 (c) The person seeking intervention shall provide copies of the statement described in  
660 Subsection (6)(b) to all parties to the proceedings before the records committee.

661 (7) The records committee shall hold a hearing within the period of time described in  
662 Subsection (4).

663 (8) At the hearing, the records committee shall allow the parties to testify, present  
664 evidence, and comment on the issues. The records committee may allow other interested  
665 persons to comment on the issues.

666 (9) (a) The records committee may review the disputed records. However, if the  
667 committee is weighing the various interests under Subsection (11), the committee must review  
668 the disputed records. The review shall be in camera.

669 (b) Members of the records committee may not disclose any information or record  
670 reviewed by the committee in camera unless the disclosure is otherwise authorized by this  
671 chapter.

672 (10) (a) Discovery is prohibited, but the records committee may issue subpoenas or  
673 other orders to compel production of necessary evidence.

674 (b) When the subject of a records committee subpoena disobeys or fails to comply with  
675 the subpoena, the records committee may file a motion for an order to compel obedience to the  
676 subpoena with the district court.

677 (c) The records committee's review shall be de novo.

678 (11) (a) No later than three business days after the hearing, the records committee shall

679 issue a signed order either granting the petition in whole or in part or upholding the  
680 determination of the governmental entity in whole or in part.

681 (b) The records committee may, upon consideration and weighing of the various  
682 interests and public policies pertinent to the classification and disclosure or nondisclosure,  
683 order the disclosure of information properly classified as private, controlled, or protected if the  
684 public interest favoring access outweighs the interest favoring restriction of access.

685 (c) In making a determination under Subsection (11)(b), the records committee shall  
686 consider and, where appropriate, limit the requester's use and further disclosure of the record in  
687 order to protect:

688 (i) privacy interests in the case of private or controlled records[-];

689 (ii) business confidentiality interests in the case of records protected under  
690 [Subsections] Subsection 63-2-304(1) [and], (2), (40)(a)(ii), or (40)(a)(vi); and

691 (iii) privacy interests or the public interest in the case of other protected records.

692 (12) The order of the records committee shall include:

693 (a) a statement of reasons for the decision, including citations to this chapter, court rule  
694 or order, another state statute, federal statute, or federal regulation that governs disclosure of  
695 the record, provided that the citations do not disclose private, controlled, or protected  
696 information;

697 (b) a description of the record or portions of the record to which access was ordered or  
698 denied, provided that the description does not disclose private, controlled, or protected  
699 information or information exempt from disclosure under Subsection 63-2-201(3)(b);

700 (c) a statement that any party to the proceeding before the records committee may  
701 appeal the records committee's decision to district court; and

702 (d) a brief summary of the appeals process, the time limits for filing an appeal, and a  
703 notice that in order to protect its rights on appeal, the party may wish to seek advice from an  
704 attorney.

705 (13) If the records committee fails to issue a decision within 35 days of the filing of the  
706 notice of appeal, that failure shall be considered the equivalent of an order denying the appeal.  
707 The petitioner shall notify the records committee in writing if [he] the petitioner considers the  
708 appeal denied.

709 (14) (a) Each government entity shall comply with the order of the records committee



710 and, if records are ordered to be produced, file:  
711 (i) a notice of compliance with the records committee upon production of the records;  
712 or  
713 (ii) a notice of intent to appeal.  
714 (b) (i) If the government entity fails to file a notice of compliance or a notice of intent  
715 to appeal, the records committee may do either or both of the following:  
716 (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or  
717 (B) send written notice of the entity's noncompliance to:  
718 (I) the governor for executive branch entities[~~;~~];  
719 (II) the Legislative Management Committee for legislative branch entities[~~;~~]; and [~~to~~]  
720 (III) the Judicial Council for judicial branch agencies entities.  
721 (ii) In imposing a civil penalty, the records committee shall consider the gravity and  
722 circumstances of the violation, including whether the failure to comply was due to neglect or  
723 was willful or intentional.

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**Legislative Review Note**  
as of 2-7-05 4:18 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0179**

Protection of Government Records

10-Feb-05

1:50 PM

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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**