

PROTECTION OF GOVERNMENT RECORDS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory S. Bell

House Sponsor: Fred R. Hunsaker

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 enacted by Chapter 280, Laws of Utah 1992

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

63-2-103, as last amended by Chapter 78, Laws of Utah 2002

63-2-202, as last amended by Chapter 298, Laws of Utah 2003

63-2-304, as last amended by Chapters 223, 299 and 358, Laws of Utah 2004

63-2-308, as last amended by Chapter 280, Laws of Utah 1992

63-2-403, as last amended by Chapter 245, Laws of Utah 1999

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

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

53B-16-301. Definitions.

As used in this part:

(1) "Person" means:

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

(i) that sponsors sponsored research; or

(ii) participates in a technology transfer;

(b) an individual;

(c) a nonprofit or profit corporation;

(d) a partnership;

(e) a sole proprietorship; or

(f) other type of business organization.

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

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

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

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

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

~~[(3)]~~ (5) "Technology transfer" refers to transferring information, commercializing research, or providing technical assistance between a public institution of higher education and external persons ~~[or entities]~~ for the purpose of economic development.

Section 2. Section **53B-16-302** is amended to read:

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

A public institution of higher education may classify only the following records as restricted:

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

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

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

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

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

(b) after a memorandum of intent to contract or an agreement in principle between the

parties:

(i) the names of the parties involved in the technology transfer or sponsored research;

~~[and]~~

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

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

Section 3. Section **53B-16-304** is amended to read:

53B-16-304. Business confidentiality claims.

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

(i) a written claim of business confidentiality; and

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

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

(i) the sponsored research project; or

(ii) the technology transfer process.

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

(i) sponsored research project; or

(ii) technology transfer process.

(2) The inadvertent failure to make a legally adequate claim of business confidentiality at the time ~~[the record is provided to the institution shall]~~ required by Subsection (1) does not

prejudice the claimant's right to make a legally adequate claim at a [~~later~~] different time before disclosure of the record.

Section 4. Section **63-2-103** is amended to read:

63-2-103. Definitions.

As used in this chapter:

(1) "Audit" means:

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

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

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

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

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

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

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

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

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

(b) "Computer program" does not mean:

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

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

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

(5) (a) "Contractor" means:

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

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

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

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

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

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

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

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

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

(ii) the resultant gaseous pressures are capable of:

(A) producing destructive effects on contiguous objects; or

(B) causing death or serious bodily injury.

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

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

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

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

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

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

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

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

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

(12) "Individual" means a human being.

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

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

- (ii) names of victims;
- (iii) the nature or general scope of the agency's initial actions taken in response to the incident;
- (iv) the general nature of any injuries or estimate of damages sustained in the incident;
- (v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or
- (vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.

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

(14) "Person" means [~~any~~]:

(a) an individual[;];

(b) a nonprofit or profit corporation[;];

(c) a partnership[;];

(d) a sole proprietorship[;]; or

(e) other type of business organization.

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

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

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

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

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

physical form or characteristics:

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

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

(b) "Record" does not mean:

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

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

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

(iv) proprietary software;

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

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

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

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

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

(20) "Record series" means a group of records that may be treated as a unit for purposes

of designation, description, management, or disposition.

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

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

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

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

(a) conducted:

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

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

(b) funded or otherwise supported by an external:

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

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

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

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

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

Section 5. Section **63-2-202** is amended to read:

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

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

(a) the subject of the record;

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

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

(d) any other individual who:

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

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

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

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

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

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

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

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

(A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and

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

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

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

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

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person,

including the subject of the record.

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

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

(a) the person who submitted the record;

(b) any other individual who:

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

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

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

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

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

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

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

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

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

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

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

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

- (i) privacy interests in the case of private or controlled records[;];
- (ii) business confidentiality interests in the case of records protected under [Subsections] Subsection 63-2-304(1) [~~and~~], (2), (40)(a)(ii), or (40)(a)(vi); and
- (iii) privacy interests or the public interest in the case of other protected records;
- (d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and
- (e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.
- (8) (a) A governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:
 - (i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;
 - (ii) determines that:
 - (A) the proposed research is bona fide[;]; and [~~that~~]
 - (B) the value of the research outweighs the infringement upon personal privacy;
 - (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of the records; and
 - (B) requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;
 - (iv) prohibits the researcher from:
 - (A) disclosing the record in individually identifiable form, except as provided in Subsection (8)(b)[;]; or [~~from~~]
 - (B) using the record for purposes other than the research approved by the governmental entity; and
 - (v) secures from the researcher a written statement of [~~his~~] the researcher's understanding of and agreement to the conditions of this Subsection (8) and [~~his~~] the researcher's understanding that violation of the terms of this Subsection (8) may subject [~~him~~] the researcher to criminal

prosecution under Section 63-2-801.

(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

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

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

- (i) private under Section 63-2-302[;]; or
- (ii) protected under Section 63-2-304 [~~to persons other than those specified in this section~~] subject to Section 63-2-308 if a claim for business confidentiality has been made under Section 63-2-308.

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

- (i) private under Section 63-2-302[;];
- (ii) controlled under Section 63-2-303[;]; or
- (iii) protected under Section 63-2-304 [~~to persons other than those specified in this section~~] subject to Section 63-2-308 if a claim for business confidentiality has been made under Section 63-2-308.

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

Section 6. Section **63-2-304** is amended to read:

63-2-304. Protected records.

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

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

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

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

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

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

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

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

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

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

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

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

(b) the information has already been disclosed to persons not employed by or under a

duty of confidentiality to the entity;

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

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

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78-34-4.5;

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

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

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

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

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

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

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

(d) reasonably could be expected to disclose the identity of a source who is not generally

known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

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

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

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

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

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

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

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

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

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

(18) records of communications between a governmental entity and an attorney

representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8;

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

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

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

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

(22) drafts, unless otherwise classified as public;

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

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

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

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

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

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

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

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

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

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

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

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

(35) records that would reveal negotiations regarding assistance or incentives offered by

or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

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

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

(a) the donor requests anonymity in writing;

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

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

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

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

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

(i) unpublished lecture notes;

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

(A) relating to research; and

(B) of:

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

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

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

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

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

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

(a) a production facility; or

(b) a magazine;

(43) information contained in the database described in Section 62A-3-311.1;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the

National Guard's federal mission;

(46) records provided by any pawnbroker or pawnshop to a law enforcement agency in compliance with Title 13, Chapter 32a, Pawnshop Transaction Information Act; and

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food.

Section 7. Section **63-2-308** is amended to read:

63-2-308. Confidentiality claims.

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

(A) a written claim of business confidentiality; and

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

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

(A) a person;

(B) a federal governmental entity;

(C) a state governmental entity; or

(D) a local governmental entity.

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

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

(A) Subsection 63-2-304(1);

(B) Subsection 63-2-304(2);

(C) Subsection 63-2-304(40)(a)(ii);

(D) Subsection 63-2-304(40)(a)(vi); or

(E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D); or

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

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

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

Section 8. Section **63-2-403** is amended to read:

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

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

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

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

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

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

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

(a) the petitioner's name, mailing address, and daytime telephone number;

(b) a copy of any denial of the records request; and

(c) the relief sought.

(3) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) (a) Except as provided in Subsection (4)(b), no later than three business days after receiving a notice of appeal, the executive secretary of the records committee shall:

(i) schedule a hearing for the records committee to discuss the appeal at the next regularly scheduled committee meeting falling at least 14 days after the date the notice of appeal is filed but no longer than 45 days after the date the notice of appeal was filed [~~provided, however,~~] except that the records committee may schedule an expedited hearing upon application of the petitioner and good cause shown;

(ii) send a copy of the notice of hearing to the petitioner; and

(iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:

(A) each member of the records committee;

(B) the records officer and the chief administrative officer of the governmental entity from which the appeal originated;

(C) any person who made a business confidentiality claim under Section 63-2-308 for a record that is the subject of the appeal; and

(D) all persons who participated in the proceedings before the governmental entity's chief administrative officer.

(b) (i) The executive secretary of the records committee may decline to schedule a hearing if the record series that is the subject of the appeal has been found by the committee in a previous hearing involving the same government entity to be appropriately classified as private, controlled, or protected.

(ii) (A) If the executive secretary of the records committee declines to schedule a hearing, the executive secretary of the records committee shall send a notice to the petitioner indicating that the request for hearing has been denied and the reason for the denial.

(B) The committee shall make rules to implement this section as provided by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

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

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

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

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

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

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

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

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

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

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

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

subpoena with the district court.

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

(11) (a) No later than three business days after the hearing, the records committee shall issue a signed order either granting the petition in whole or in part or upholding the determination of the governmental entity in whole or in part.

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

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

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

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

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

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

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

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

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

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

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

(14) (a) Each government entity shall comply with the order of the records committee and, if records are ordered to be produced, file:

- (i) a notice of compliance with the records committee upon production of the records; or
- (ii) a notice of intent to appeal.

(b) (i) If the government entity fails to file a notice of compliance or a notice of intent to appeal, the records committee may do either or both of the following:

- (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or
- (B) send written notice of the entity's noncompliance to:
 - (I) the governor for executive branch entities~~;~~~~to~~;
 - (II) the Legislative Management Committee for legislative branch entities~~;~~ and ~~to~~
 - (III) the Judicial Council for judicial branch agencies entities.

(ii) In imposing a civil penalty, the records committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional.