

Representative Douglas C. Aagard proposes the following substitute bill:

1 **ACCESS AND FEE AMENDMENTS TO**
2 **GOVERNMENT RECORDS ACCESS AND**
3 **MANAGEMENT ACT**

4 2006 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Douglas C. Aagard**

7 Senate Sponsor: David L. Thomas

9 **LONG TITLE**

10 **General Description:**

11 This bill modifies the Government Records Access and Management Act by amending
12 certain provisions related to protected records and manipulation of certain records.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ provides that, in certain circumstances, an individual's home address, home
16 telephone number, or personal mobile phone number is a protected record, if:
- 17 • the information is required to be provided in order to comply with a law; and
 - 18 • by complying with the law and due to the nature of the law the subject of the
19 record has a reasonable expectation that this information will be protected;
- 20 ▶ allows the disclosure of an individual's home address or phone numbers that are
21 otherwise protected if:
- 22 • the head of the governmental entity determines that the disclosure is mutually
23 beneficial to the subject of the record, the governmental entity, and to the public
24 by serving a public purpose related to public safety or consumer protection; and
 - 25 • the person who receives the record from the governmental entity agrees not to



26 use or allow its use for advertising or solicitation purposes;

- 27 ▶ provides that in response to a request, a governmental entity is not required to:
 - 28 • compile, format, manipulate, package, summarize, or tailor information;
 - 29 • provide a record in a particular format, medium, or program; or
 - 30 • fulfill a person's records request if the information requested is accessible in the
- 31 same physical form and content in a public publication produced by the
- 32 governmental entity and if the governmental entity provides the requester with
- 33 the publication and specifies where the record may be found in the publication;
- 34 ▶ allows rather than requires a governmental entity to provide a record in a particular
- 35 form if the governmental entity determines it is able to do so without unreasonably
- 36 interfering with its duties;
- 37 ▶ allows contractors and private providers to receive private, controlled, or protected
- 38 records under certain circumstances;
- 39 ▶ provides that improper use of a record is a class B misdemeanor; and
- 40 ▶ makes technical changes.

41 **Monies Appropriated in this Bill:**

42 None

43 **Other Special Clauses:**

44 None

45 **Utah Code Sections Affected:**

46 AMENDS:

- 47 **63-2-201**, as last amended by Chapter 40, Laws of Utah 2005
- 48 **63-2-203**, as last amended by Chapter 40, Laws of Utah 2005
- 49 **63-2-206**, as last amended by Chapter 63, Laws of Utah 2002
- 50 **63-2-304**, as last amended by Chapters 2, 131, 201, 214, 256 and 297, Laws of Utah
- 51 2005
- 52 **63-2-801**, as last amended by Chapter 280, Laws of Utah 1992

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

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

56 **63-2-201. Right to inspect records and receive copies of records.**

57 (1) Every person has the right to inspect a public record free of charge, and the right to
58 take a copy of a public record during normal working hours, subject to Sections 63-2-203 and
59 63-2-204.

60 (2) A record is public unless otherwise expressly provided by statute.

61 (3) The following records are not public:

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

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

68 (4) Only a record specified in Section 63-2-302, 63-2-302.5, 63-2-303, or 63-2-304
69 may be classified private, controlled, or protected.

70 (5) (a) A governmental entity may not disclose a record that is private, controlled, or
71 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section
72 63-2-202, 63-2-206, or 63-2-302.5.

73 (b) A governmental entity may disclose a record that is private under Subsection
74 63-2-302(2) or protected under Section 63-2-304 to persons other than those specified in
75 Section 63-2-202 or 63-2-206 if the head of a governmental entity, or a designee, determines
76 that:

77 (i) there is no interest in restricting access to the record; or

78 (ii) the interests favoring access outweighs the interest favoring restriction of access.

79 (c) In addition to the disclosure under Subsection (5)(b), a governmental entity may
80 disclose a record that is protected under Subsection 63-2-304(51) if:

81 (i) the head of the governmental entity, or a designee, determines that the disclosure:

82 (A) is mutually beneficial to:

83 (I) the subject of the record;

84 (II) the governmental entity; and

85 (III) the public; and

86 (B) serves a public purpose related to:

87 (I) public safety; or

88 (II) consumer protection; and

89 (ii) the person who receives the record from the governmental entity agrees not to use
90 or allow the use of the record for advertising or solicitation purposes.

91 (6) (a) The disclosure of a record to which access is governed or limited pursuant to
92 court rule, another state statute, federal statute, or federal regulation, including a record for
93 which access is governed or limited as a condition of participation in a state or federal program
94 or for receiving state or federal funds, is governed by the specific provisions of that statute,
95 rule, or regulation.

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

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

99 (a) the person requesting the record has a right to inspect it;

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

101 (c) the person pays the lawful fees.

102 (8) (a) ~~[A]~~ In response to a request, a governmental entity is not required to:

103 (i) create a record [in response to a request.];

104 (ii) compile, format, manipulate, package, summarize, or tailor information;

105 (iii) provide a record in a particular format, medium, or program ~~§~~ **→ not currently**

105a **maintained by the governmental entity** ~~←§~~ ;

106 (iv) fulfill a person's records request if the request unreasonably duplicates prior

107 records requests from that person; or

108 (v) fill a person's records request if:

109 (A) the record requested is accessible in the identical physical form and content in a
110 public publication or product produced by the governmental entity receiving the request;

111 (B) the governmental entity provides the person requesting the record with the public
112 publication or product; and

113 (C) the governmental entity specifies where the record can be found in the public
114 publication or product.

115 (b) Upon request, a governmental entity ~~[shall]~~ may provide a record in a particular
116 ~~[format]~~ form under Subsection (8)(a)(ii) or (iii) if:

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

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

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

123 (9) (a) A governmental entity may allow a person requesting more than 50 pages of
124 records to copy the records if:

125 (i) the records are contained in files that do not contain records that are exempt from
126 disclosure, or the records may be segregated to remove private, protected, or controlled
127 information from disclosure; and

128 (ii) the governmental entity provides reasonable safeguards to protect the public from
129 the potential for loss of a public record.

130 (b) When the requirements of Subsection (9)(a) are met, the governmental entity may:

131 (i) provide the requester with the facilities for copying the requested records and
132 require that the requester make the copies; or

133 (ii) allow the requester to provide the requester's own copying facilities and personnel
134 to make the copies at the governmental entity's offices and waive the fees for copying the
135 records.

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

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

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

146 (12) A governmental entity may provide access to an electronic copy of a record in lieu
147 of providing access to its paper equivalent.

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

149 **63-2-203. Fees.**

150 (1) A governmental entity may charge a reasonable fee to cover the governmental
151 entity's actual cost of [~~duplicating~~] providing a record. This fee shall be approved by the
152 governmental entity's executive officer.

153 (2) (a) When a governmental entity compiles a record in a form other than that
154 normally maintained by the governmental entity, the actual costs under this section may include
155 the following:

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

159 (ii) the cost of staff time for search, retrieval, and other direct administrative costs for
160 complying with a request; and

161 (iii) in the case of fees for a record that is the result of computer output other than word
162 processing, the actual incremental cost of providing the electronic services and products
163 together with a reasonable portion of the costs associated with formatting or interfacing the
164 information for particular users, and the administrative costs as set forth in Subsections
165 (2)(a)(i) and (ii).

166 (b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest
167 paid employee who, in the discretion of the custodian of records, has the necessary skill and
168 training to perform the request.

169 (c) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first
170 quarter hour of staff time.

171 (3) (a) Fees shall be established as provided in this Subsection (3).

172 (b) A governmental entity with fees established by the Legislature:

173 (i) shall establish the fees defined in Subsection (2), or other actual costs associated
174 with this section through the budget process; and

175 (ii) may use the procedures of Section 63-38-3.2 to set fees until the Legislature
176 establishes fees through the budget process.

177 (c) Political subdivisions shall establish fees by ordinance or written formal policy
178 adopted by the governing body.

179 (d) The judiciary shall establish fees by rules of the judicial council.

180 (4) A governmental entity may fulfill a record request without charge and is

181 encouraged to do so when it determines that:

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

183 (b) the individual requesting the record is the subject of the record, or an individual
184 specified in Subsection 63-2-202(1) or (2); or

185 (c) the requester's legal rights are directly implicated by the information in the record,
186 and the requester is impecunious.

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

188 (a) reviewing a record to determine whether it is subject to disclosure, except as
189 permitted by Subsection (2)(a)(ii); or

190 (b) inspecting a record.

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

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

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

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

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

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

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

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

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

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

209 (b) The lieutenant governor shall:

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

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

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

215 **63-2-206. Sharing records.**

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

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

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

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

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

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

230 ~~[(a)]~~ (i) that the record or record series is necessary to the performance of the
231 governmental entity's duties and functions;

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

234 ~~[(c)]~~ (iii) that the use of the record or record series produces a public benefit that
235 outweighs the individual privacy right that protects the record or record series.

236 (b) A governmental entity may provide a private, controlled, or protected record or
237 record series to a contractor or a private provider according to the requirements of Subsection
238 (6)(b).

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

242 ~~[(a) the record is necessary to the performance of the requesting entity's duties and~~

243 functions; or]

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

246 ~~[(4)]~~ (3) (a) A governmental entity shall provide a private, controlled, or protected
 247 record to another governmental entity, a political subdivision, a government-managed
 248 corporation, the federal government, or another state if the requesting entity:

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

250 (ii) is required to inspect the record as a condition of participating in a state or federal
 251 program or for receiving state or federal funds; or

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

253 (b) Subsection ~~[(4)]~~ (3)(a)(iii) applies only if the record is a record described in
 254 Subsection 63-2-304(4).

255 ~~[(5)]~~ (4) Before disclosing a record or record series under this section to another
 256 governmental entity, another state, the United States, ~~[or]~~ a foreign government, or to a
 257 contractor or private provider, the originating governmental entity shall:

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

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

264 ~~[(6)]~~ (5) A governmental entity may disclose a record to another state, the United
 265 States, or a foreign government for the reasons listed in Subsections (1)~~;~~ and (2)~~;~~ and ~~(3)]~~
 266 without complying with the procedures of Subsection (2) or ~~[(5)]~~ (4) if disclosure is authorized
 267 by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

268 ~~[(7)]~~ (6) (a) Subject to ~~[Subsection (7)]~~ Subsections (6)(b) and (c), ~~[a governmental]~~ an
 269 entity receiving a record under this section is subject to the same restrictions on disclosure of
 270 the record as the originating entity.

271 (b) A contractor or a private provider may receive information under this section only
 272 if:

273 (i) the contractor or private provider's use of the record or record series produces a

274 public benefit that outweighs the individual privacy right that protects the record or record
275 series;

276 (ii) the record or record series it requests:

277 (A) is necessary for the performance of a contract with a governmental entity;

278 (B) will only be used for the performance of the contract with the governmental entity;

279 (C) will not be disclosed to any other person; and

280 (D) will not be used for advertising or solicitation purposes; and

281 (iii) the contractor or private provider gives written assurance to the governmental

282 entity that is providing the record or record series that it will adhere to the restrictions of this

283 Subsection (6)(b).

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

288 [~~(8)~~] (7) Notwithstanding any other provision of this section, if a more specific court
289 rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing
290 information, that rule, order, statute, or federal regulation controls.

291 [~~(9)~~] (8) The following records may not be shared under this section:

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

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

296 [~~(10)~~] (9) Records that may evidence or relate to a violation of law may be disclosed to
297 a government prosecutor, peace officer, or auditor.

298 Section 4. Section **63-2-304** is amended to read:

299 **63-2-304. Protected records.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

336 of the property; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

456 (a) the donor requests anonymity in writing;

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

459 (c) except for an institution within the state system of higher education defined in

460 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
461 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
462 over the donor, a member of the donor's immediate family, or any entity owned or controlled
463 by the donor or the donor's immediate family;

464 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
465 73-18-13;

466 (39) a notification of workers' compensation insurance coverage described in Section
467 34A-2-205;

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

471 (i) unpublished lecture notes;

472 (ii) unpublished notes, data, and information:

473 (A) relating to research; and

474 (B) of:

475 (I) the institution within the state system of higher education defined in Section
476 53B-1-102; or

477 (II) a sponsor of sponsored research;

478 (iii) unpublished manuscripts;

479 (iv) creative works in process;

480 (v) scholarly correspondence; and

481 (vi) confidential information contained in research proposals;

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

484 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

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

488 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
489 Office of the Legislative Auditor General is a public document unless the legislator asks that
490 the records in the custody or control of the Office of Legislative Auditor General that would

491 reveal the name of a particular legislator who requests a legislative audit be maintained as
492 protected records until the audit is completed and made public;

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

495 (a) a production facility; or
496 (b) a magazine;

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

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

500 (45) information regarding National Guard operations or activities in support of the
501 National Guard's federal mission;

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

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

507 (48) except to the extent that the record is exempt from this chapter pursuant to Section
508 63-2-106, records related to an emergency plan or program prepared or maintained by the
509 Division of Emergency Services and Homeland Security the disclosure of which would
510 jeopardize:

511 (a) the safety of the general public; or
512 (b) the security of:
513 (i) governmental property;
514 (ii) governmental programs; or
515 (iii) the property of a private person who provides the Division of Emergency Services
516 and Homeland Security information;

517 (49) records of the Department of Agriculture and Food relating to the National
518 Animal Identification System or any other program that provides for the identification, tracing,
519 or control of livestock diseases, including any program established under Title 4, Chapter 24,
520 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, [Utah] Livestock Inspection
521 and Quarantine; [and]

522 (50) as provided in Section 26-39-109:

523 (a) information or records held by the Department of Health related to a complaint
524 regarding a child care program or residential child care which the department is unable to
525 substantiate; and

526 (b) information or records related to a complaint received by the Department of Health
527 from an anonymous complainant regarding a child care program or residential child care[-]; and

528 (51) unless otherwise classified as public under Section 63-2-301 and except as
529 provided under Section 41-1a-116, an individual's home address, home telephone number, or
530 personal mobile phone number, if:

531 (a) the individual is required to provide the information in order to comply with a law,
532 ordinance, rule, or order of a government entity; and

533 (b) the subject of the record has a reasonable expectation that this information will be
534 kept confidential due to:

535 (i) the nature of the law, ordinance, rule, or order; and

536 (ii) the individual complying with the law, ordinance, rule, or order.

537 Section 5. Section **63-2-801** is amended to read:

538 **63-2-801. Criminal penalties.**

539 (1) (a) A public employee or other person who has lawful access to any private,
540 controlled, or protected record under this chapter, and who intentionally discloses [~~or~~],
541 provides a copy of , or improperly uses a private, controlled, or protected record [~~to any person~~]
542 knowing that [~~such~~] the disclosure or use is prohibited under this chapter, is guilty of a class B
543 misdemeanor.

544 (b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released
545 private, controlled, or protected information in the reasonable belief that the use or disclosure
546 of the information was necessary to expose a violation of law involving government
547 corruption, abuse of office, or misappropriation of public funds or property.

548 (c) It is a defense to prosecution under Subsection (1)(a) that the record could have
549 lawfully been released to the recipient if it had been properly classified.

550 (2) (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a
551 copy of any private, controlled, or protected record to which he is not legally entitled is guilty
552 of a class B misdemeanor.

553 (b) No person shall be guilty under Subsection (2)(a) who receives the record,
554 information, or copy after the fact and without prior knowledge of or participation in the false
555 pretenses, bribery, or theft.

556 (3) A public employee who intentionally refuses to release a record the disclosure of
557 which the employee knows is required by law or by final unappealed order from a
558 governmental entity, the records committee, or a court, is guilty of a class B misdemeanor.

Fiscal Note
Bill Number HB0028S01

**Access and Fee Amendments to Government Records Access and
Management Act**

10-Feb-06
12:02 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst