

1 **AMENDMENTS TO GOVERNMENT RECORDS**

2 **ACCESS AND MANAGEMENT ACT**

3 2006 GENERAL SESSION

4 STATE OF UTAH

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

6 Senate Sponsor: David L. Thomas

7

8 **LONG TITLE**

9 **General Description:**

10 This bill makes amendments to the treatment of records under the Government Records
11 Access and Management Act.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ modifies the definition of records subject to the act to exclude materials that are not
15 connected with the conduct of the public's business;

16 ▶ provides that internal communications that are part of the deliberative process in
17 connection with the preparation of legislation between members of a legislative
18 body or the legislative body's staff are protected records;

19 ▶ provides that certain communications between citizens and elected officials are
20 protected records;

21 ▶ requires that governmental entities give notice to persons who are providing private
22 or controlled information as to how the information is currently used and shared;

23 ▶ clarifies that certain government entities shall submit records retention schedules for
24 approval by the State Records Committee;

25 ▶ provides that government entities that do not submit retention schedules for
26 approval shall be governed by the model retention schedule maintained by the state
27 archivist;



28 ▶ clarifies that the Legislature may set its own retention schedules and records
29 management, notice, and amendment policies;

30 ▶ clarifies that the judiciary may set its own retention schedules and records
31 management policies; and

32 ▶ makes technical changes.

33 **Monies Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **63-2-103**, as last amended by Chapters 40 and 201, Laws of Utah 2005

40 **63-2-304**, as last amended by Chapters 2, 131, 201, 214, 256 and 297, Laws of Utah
41 2005

42 **63-2-601**, as last amended by Chapter 280, Laws of Utah 1992

43 **63-2-702**, as last amended by Chapter 280, Laws of Utah 1992

44 **63-2-703**, as last amended by Chapters 228 and 280, Laws of Utah 1992

45 ENACTS:

46 **63-2-604**, Utah Code Annotated 1953



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

49 Section 1. Section **63-2-103** is amended to read:

50 **63-2-103. Definitions.**

51 As used in this chapter:

52 (1) "Audit" means:

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

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

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

61 (a) the time and general nature of police, fire, and paramedic calls made to the agency;
62 (b) and any arrests or jail bookings made by the agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 typically present in the record series would be given if classified.

91 (8) "Elected official" means each person elected to a state office, county office,
92 municipal office, school board or school district office, or special district office, but does not
93 include judges standing for retention election.

94 [~~8~~] (9) "Explosive" means a chemical compound, device, or mixture:

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

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

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

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

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

102 (B) causing death or serious bodily injury.

103 [~~9~~] (10) "Government audit agency" means any governmental entity that conducts an
104 audit.

105 [~~10~~] (11) (a) "Governmental entity" means:

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

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

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

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

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

121 (b) "Governmental entity" also means every office, agency, board, bureau, committee,
122 department, advisory board, or commission of an entity listed in Subsection [~~(10)~~] (11)(a) that
123 is funded or established by the government to carry out the public's business.

124 [~~(11)~~] (12) "Gross compensation" means every form of remuneration payable for a
125 given period to an individual for services provided including salaries, commissions, vacation
126 pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any
127 similar benefit received from the individual's employer.

128 [~~(12)~~] (13) "Individual" means a human being.

129 [~~(13)~~] (14) (a) "Initial contact report" means an initial written or recorded report,
130 however titled, prepared by peace officers engaged in public patrol or response duties
131 describing official actions initially taken in response to either a public complaint about or the
132 discovery of an apparent violation of law, which report may describe:

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

134 (ii) names of victims;

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

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

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

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

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

146 (15) "Legislative body" means:

147 (a) the Legislature;

148 (b) a county legislative body as defined in Subsection 68-3-12(2);

149 (c) a city council or town council in the traditional management arrangement
150 established by Title 10, Chapter 3, Part 1, Governing Body; or

151 (d) a municipal council in the council-mayor or council-manager optional forms of

152 government defined in Section 10-3-101.

153 [~~(14)~~] (16) "Notice of compliance" means a statement confirming that a governmental
154 entity has complied with a records committee order.

155 [~~(15)~~] (17) "Person" means:

156 (a) an individual;

157 (b) a nonprofit or profit corporation;

158 (c) a partnership;

159 (d) a sole proprietorship;

160 (e) other type of business organization; or

161 (f) any combination acting in concert with one another.

162 [~~(16)~~] (18) "Private provider" means any person who contracts with a governmental
163 entity to provide services directly to the public.

164 [~~(17)~~] (19) "Private record" means a record containing data on individuals that is
165 private as provided by Section 63-2-302.

166 [~~(18)~~] (20) "Protected record" means a record that is classified protected as provided by
167 Section 63-2-304.

168 [~~(19)~~] (21) "Public record" means a record that is not private, controlled, or protected
169 and that is not exempt from disclosure as provided in Subsection 63-2-201(3)(b).

170 [~~(20)~~] (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph,
171 film, card, tape, recording, electronic data, or other documentary material regardless of physical
172 form or characteristics:

173 (i) that is prepared, owned, received, or retained by a governmental entity or political
174 subdivision; and

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

177 (b) "Record" does not mean:

178 (i) material that is not prepared, owned, received, or retained in connection with the
179 conduct of the public's business;

180 [~~(i)~~] (ii) a temporary draft or similar material prepared for the originator's personal use
181 or prepared by the originator for the personal use of an individual for whom the originator is
182 working;

183 [~~(ii)~~] (iii) material that is legally owned by an individual in the individual's private
184 capacity;

185 [~~(iii)~~] (iv) material to which access is limited by the laws of copyright or patent unless
186 the copyright or patent is owned by a governmental entity or political subdivision;

187 [~~(iv)~~] (v) proprietary software;

188 [~~(v)~~] (vi) junk mail or a commercial publication received by a governmental entity or
189 an official or employee of a governmental entity;

190 [~~(vi)~~] (vii) a book that is cataloged, indexed, or inventoried and contained in the
191 collections of a library open to the public;

192 [~~(vii)~~] (viii) material that is cataloged, indexed, or inventoried and contained in the
193 collections of a library open to the public, regardless of physical form or characteristics of the
194 material;

195 [~~(viii)~~] (ix) a daily calendar or other personal note prepared by the originator for the
196 originator's personal use or for the personal use of an individual for whom the originator is
197 working;

198 [~~(ix)~~] (x) a computer program that is developed or purchased by or for any
199 governmental entity for its own use; or

200 [~~(x)~~] (xi) a note or internal memorandum prepared as part of the deliberative process
201 by:

202 (A) a member of the judiciary;

203 (B) an administrative law judge;

204 (C) a member of the Board of Pardons and Parole; or

205 (D) a member of any other body charged by law with performing a quasi-judicial
206 function.

207 [~~(21)~~] (23) "Record series" means a group of records that may be treated as a unit for
208 purposes of designation, description, management, or disposition.

209 [~~(22)~~] (24) "Records committee" means the State Records Committee created in
210 Section 63-2-501.

211 [~~(23)~~] (25) "Records officer" means the individual appointed by the chief
212 administrative officer of each governmental entity, or the political subdivision to work with
213 state archives in the care, maintenance, scheduling, designation, classification, disposal, and

214 preservation of records.

215 [~~(24)~~] (26) "Schedule," "scheduling," and their derivative forms mean the process of
216 specifying the length of time each record series should be retained by a governmental entity for
217 administrative, legal, fiscal, or historical purposes and when each record series should be
218 transferred to the state archives or destroyed.

219 [~~(25)~~] (27) "Sponsored research" means research, training, and other sponsored
220 activities as defined by the federal Executive Office of the President, Office of Management
221 and Budget:

222 (a) conducted:

223 (i) by an institution within the state system of higher education defined in Section
224 53B-1-102; and

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

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

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

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

230 [~~(26)~~] (28) "State archives" means the Division of Archives and Records Service
231 created in Section 63-2-901.

232 [~~(27)~~] (29) "State archivist" means the director of the state archives.

233 [~~(28)~~] (30) "Summary data" means statistical records and compilations that contain
234 data derived from private, controlled, or protected information but that do not disclose private,
235 controlled, or protected information.

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

237 **63-2-304. Protected records.**

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

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

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

243 (a) disclosure of the information could reasonably be expected to result in unfair
244 competitive injury to the person submitting the information or would impair the ability of the

245 governmental entity to obtain necessary information in the future;

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

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

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

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

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

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

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

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

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

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

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

275 (e) the property under consideration for public acquisition is a single family residence

276 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
277 the property as required under Section 78-34-4.5;

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

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

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

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

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

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

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

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

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

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

305 (11) records the disclosure of which would jeopardize the security of governmental
306 property, governmental programs, or governmental recordkeeping systems from damage, theft,

307 or other appropriation or use contrary to law or public policy;

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

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

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

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

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

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

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

329 (19) (a) (i) personal files of a state legislator, including [~~personal~~] correspondence to or
330 from a member of the Legislature[~~; provided that~~] subject to the provisions of Subsection (51);
331 and

332 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
333 legislative action or policy may not be classified as protected under this section; and

334 (b) (i) an internal communication that is part of the deliberative process in connection
335 with the preparation of legislation between:

336 (A) members of a legislative body;

337 (B) a member of a legislative body and a member of the legislative body's staff; or

338 (C) members of a legislative body's staff; and
339 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
340 legislative action or policy may not be classified as protected under this section;
341 (20) (a) records in the custody or control of the Office of Legislative Research and
342 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
343 legislation or contemplated course of action before the legislator has elected to support the
344 legislation or course of action, or made the legislation or course of action public; and
345 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
346 Office of Legislative Research and General Counsel is a public document unless a legislator
347 asks that the records requesting the legislation be maintained as protected records until such
348 time as the legislator elects to make the legislation or course of action public;
349 (21) research requests from legislators to the Office of Legislative Research and
350 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
351 in response to these requests;
352 (22) drafts, unless otherwise classified as public;
353 (23) records concerning a governmental entity's strategy about collective bargaining or
354 pending litigation;
355 (24) records of investigations of loss occurrences and analyses of loss occurrences that
356 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
357 Uninsured Employers' Fund, or similar divisions in other governmental entities;
358 (25) records, other than personnel evaluations, that contain a personal recommendation
359 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
360 personal privacy, or disclosure is not in the public interest;
361 (26) records that reveal the location of historic, prehistoric, paleontological, or
362 biological resources that if known would jeopardize the security of those resources or of
363 valuable historic, scientific, educational, or cultural information;
364 (27) records of independent state agencies if the disclosure of the records would
365 conflict with the fiduciary obligations of the agency;
366 (28) records of an institution within the state system of higher education defined in
367 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
368 retention decisions, and promotions, which could be properly discussed in a meeting closed in

369 accordance with Title 52, Chapter 4, Open and Public Meetings, provided that records of the
370 final decisions about tenure, appointments, retention, promotions, or those students admitted,
371 may not be classified as protected under this section;

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

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

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

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

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

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

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

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

399 (37) the name of a donor or a prospective donor to a governmental entity, including an

400 institution within the state system of higher education defined in Section 53B-1-102, and other
401 information concerning the donation that could reasonably be expected to reveal the identity of
402 the donor, provided that:

403 (a) the donor requests anonymity in writing;

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

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

411 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
412 73-18-13;

413 (39) a notification of workers' compensation insurance coverage described in Section
414 34A-2-205;

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

418 (i) unpublished lecture notes;

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

420 (A) relating to research; and

421 (B) of:

422 (I) the institution within the state system of higher education defined in Section
423 53B-1-102; or

424 (II) a sponsor of sponsored research;

425 (iii) unpublished manuscripts;

426 (iv) creative works in process;

427 (v) scholarly correspondence; and

428 (vi) confidential information contained in research proposals;

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

- 431 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 432 (41) (a) records in the custody or control of the Office of Legislative Auditor General
- 433 that would reveal the name of a particular legislator who requests a legislative audit prior to the
- 434 date that audit is completed and made public; and
- 435 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 436 Office of the Legislative Auditor General is a public document unless the legislator asks that
- 437 the records in the custody or control of the Office of Legislative Auditor General that would
- 438 reveal the name of a particular legislator who requests a legislative audit be maintained as
- 439 protected records until the audit is completed and made public;
- 440 (42) records that provide detail as to the location of an explosive, including a map or
- 441 other document that indicates the location of:
 - 442 (a) a production facility; or
 - 443 (b) a magazine;
- 444 (43) information contained in the database described in Section 62A-3-311.1;
- 445 (44) information contained in the Management Information System and Licensing
- 446 Information System described in Title 62A, Chapter 4a, Child and Family Services;
- 447 (45) information regarding National Guard operations or activities in support of the
- 448 National Guard's federal mission;
- 449 (46) records provided by any pawnbroker or pawnshop to a law enforcement agency or
- 450 to the central database in compliance with Title 13, Chapter 32a, Pawnshop Transaction
- 451 Information Act;
- 452 (47) information regarding food security, risk, and vulnerability assessments performed
- 453 by the Department of Agriculture and Food;
- 454 (48) except to the extent that the record is exempt from this chapter pursuant to Section
- 455 63-2-106, records related to an emergency plan or program prepared or maintained by the
- 456 Division of Emergency Services and Homeland Security the disclosure of which would
- 457 jeopardize:
 - 458 (a) the safety of the general public; or
 - 459 (b) the security of:
 - 460 (i) governmental property;
 - 461 (ii) governmental programs; or

462 (iii) the property of a private person who provides the Division of Emergency Services
463 and Homeland Security information;

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

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

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

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

475 (51) a communication between a citizen of the state and an elected official, unless one
476 of the parties to the communication elects to make the communication public.

477 Section 3. Section **63-2-601** is amended to read:

478 **Part 6. Collection of Information and Accuracy of Records**

479 **63-2-601. Rights of individuals on whom data is maintained -- Classification**
480 **statement -- Notice to provider of information.**

481 (1) (a) Each governmental entity shall file with the state archivist a statement
482 explaining the purposes for which a record series that is designated as private or controlled
483 [~~are~~] is collected and used by that governmental entity.

484 (b) [~~That~~] The statement filed under Subsection (1)(a) is a public record.

485 (2) (a) [~~Upon request, each~~] A governmental entity shall [~~explain~~] provide notice of the
486 following to [~~an individual~~] a person that is asked to furnish information that could be
487 classified as a private or controlled record:

488 [~~(a)~~] (i) the reasons the [~~individual~~] person is asked to furnish [~~to the governmental~~
489 entity] the information [~~that could be classified private or controlled~~];

490 [~~(b)~~] (ii) the intended uses of the information; [~~and~~]

491 [~~(c)~~] (iii) the consequences for refusing to provide the information[-]; and

492 (iv) the classes of persons and the governmental entities that currently:

493 (A) share the information with the governmental entity; or
494 (B) receive the information from the governmental entity on a regular or contractual
495 basis.
496 (b) The notice shall be:
497 (i) posted in a prominent place at all locations where the governmental entity collects
498 the information; or
499 (ii) included as part of the documents or forms that are used by the governmental entity
500 to collect the information.
501 (3) Upon request, each governmental entity shall explain to a person:
502 (a) the reasons the person is asked to furnish information that could be classified as a
503 private or controlled record;
504 (b) the intended uses of the information referred to in Subsection (3)(a);
505 (c) the consequences for refusing to provide the information referred to in Subsection
506 (3)(a); and
507 (d) the reasons and circumstances under which the information referred to in
508 Subsection (3)(a) may be shared with or provided to other persons or governmental entities.
509 [~~(3)~~] (4) A governmental entity may [~~not~~] use private or controlled records only for
510 those purposes [~~other than those~~]:
511 (a) given in the statement filed with the state archivist under Subsection (1); or [~~for~~
512 purposes other than those for]
513 (b) for which another governmental entity [~~could~~] may use the record under Section
514 63-2-206.
515 Section 4. Section **63-2-604** is enacted to read:
516 **63-2-604. Retention and disposition of records.**
517 (1) (a) Except for a governmental entity that is permitted to maintain its own retention
518 schedules under Part 7, Applicability to Political Subdivisions, the Judiciary, and the
519 Legislature, each governmental entity shall file with the State Records Committee a proposed
520 schedule for the retention and disposition of each type of material that is defined as a record
521 under this chapter.
522 (b) After a retention schedule is reviewed and approved by the State Records
523 Committee under Subsection 63-2-502(1)(b), the governmental entity shall maintain and

524 destroy records in accordance with the retention schedule.

525 (c) If a governmental entity subject to the provisions of this section has not received an
526 approved retention schedule for a specific type of material that is classified as a record under
527 this chapter, the model retention schedule maintained by the state archivist shall govern the
528 retention and destruction of that type of material.

529 (2) A retention schedule that is filed with or approved by the State Records Committee
530 under the requirements of this section is a public record.

531 Section 5. Section **63-2-702** is amended to read:

532 **63-2-702. Applicability to judiciary.**

533 (1) The judiciary is subject to the provisions of this chapter except as provided in this
534 section.

535 (2) (a) The judiciary is not subject to Part 4 [~~of this chapter~~], Appeals, except as
536 provided in Subsection (5).

537 (b) The judiciary is not subject to [~~Part 5 of this chapter~~] Parts 5, State Records
538 Committee, and 6, Collection of Information and Accuracy of Records.

539 (c) The judiciary is subject to only the following sections in Part 9 [~~of this chapter~~],
540 Archives and Records Service: Sections 63-2-905 and 63-2-906.

541 (3) The Judicial Council, the Administrative Office of the Courts, the courts, and other
542 administrative units in the judicial branch shall designate and classify their records in
543 accordance with Sections 63-2-301 through 63-2-304.

544 (4) Substantially consistent with the provisions of this chapter, the Judicial Council
545 shall:

546 (a) make rules governing requests for access, fees, classification, designation,
547 segregation, management, retention, denials and appeals of requests for access and retention,
548 and amendment of judicial records;

549 (b) establish an appellate board to handle appeals from denials of requests for access
550 and provide that a requester who is denied access by the appellate board may file a lawsuit in
551 district court; and

552 (c) provide standards for the management and retention of judicial records substantially
553 consistent with Section 63-2-903.

554 (5) Rules governing appeals from denials of requests for access shall substantially

555 comply with the time limits provided in Section 63-2-204 and Part 4 [~~of this chapter~~], Appeals.

556 (6) Upon request, the state archivist shall:

557 (a) assist with and advise concerning the establishment of a records management
558 program in the judicial branch; and

559 (b) as required by the judiciary, provide program services similar to those available to
560 the executive and legislative branches of government as provided in this chapter.

561 Section 6. Section **63-2-703** is amended to read:

562 **63-2-703. Applicability to the Legislature.**

563 (1) The Legislature and its staff offices shall designate and classify records in
564 accordance with Sections 63-2-301 through 63-2-304 as public, private, controlled, or
565 protected.

566 (2) (a) The Legislature and its staff offices are not subject to Section 63-2-203 or to
567 Part 4 [~~or~~], Appeals, 5 [~~of this chapter~~], State Records Committee, or 6, Collection of
568 Information and Accuracy of Records.

569 (b) The Legislature is subject to only the following sections in Part 9 [~~of this chapter~~],
570 Archives and Records Service: Sections 63-2-902, 63-2-906, and 63-2-909.

571 (3) The Legislature, through the Legislative Management Committee[;]:

572 (a) shall establish policies to handle requests for [~~records and~~] classification,
573 designation, fees, access, denials, segregation, appeals, management, retention, and amendment
574 of records; and

575 (b) may establish an appellate board to hear appeals from denials of access.

576 (4) Policies shall include reasonable times for responding to access requests consistent
577 with the provisions of Part 2 [~~of this chapter~~], Access to Records, fees, and reasonable time
578 limits for appeals.

579 (5) Upon request, the state archivist shall:

580 (a) assist with and advise concerning the establishment of a records management
581 program in the Legislature; and

582 (b) as required by the Legislature, provide program services similar to those available
583 to the executive branch of government, as provided in this chapter.

Legislative Review Note

as of 10-19-05 3:40 PM

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

Office of Legislative Research and General Counsel

Legislative Committee Note

as of 12-16-05 6:54 AM

The Government Records Access and Management Task Force recommended this bill.