

**SHARED GOVERNMENT RECORDS
AMENDMENTS**

2006 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Mike Dmitrich

House Sponsor: _____

Cosponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the Government Records Access and Management Act by amending provisions for requesting records from certain governmental entities that receive the record as a shared record.

Highlighted Provisions:

This bill:

▸ provides that a person making a request for a record shall submit the request to the governmental entity that prepared, owns, or retains the record; and

▸ provides that a ~~§~~ [person may not submit a request for a record to a] ~~§~~ governmental entity that has received ~~§~~ [the] a ~~§~~ record as a shared record from another governmental entity for enforcing, litigating, or investigating the law or for auditing purposes ~~§~~ **may not provide the record;**

▸ **provides that if a governmental entity is prohibited from providing certain records, it shall deny the records request and inform the person making the request that records requests must be submitted to the governmental entity that prepares, owns, or retains the record; and**

▸ **make technical changes** ~~§~~ .

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63-2-204, as last amended by Chapters 40 and 71, Laws of Utah 2005



28

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

30 Section 1. Section **63-2-204** is amended to read:

31 **63-2-204. Requests -- Time limit for response and extraordinary circumstances.**

32 (1) A person making a request for a record shall furnish the governmental entity with a

33 written request containing:

34 (a) the person's name, mailing address, and daytime telephone number, if available;

35 and

36 (b) a description of the record requested that identifies the record with reasonable

37 specificity.

38 (2) (a) Subject to Subsection (2)(b), a person making a request for a record shall submit

39 the request to the governmental entity that prepares, owns, or retains the record.

40 (b) ~~§~~→ [A person may not submit a request for a record to a governmental entity that has

41 received the record] In response to a request for a record, a governmental entity may not

41a provide a record that it has received ~~←§~~ under Section 63-2-206 as a shared record ~~§~~→ if the

41b record was shared ~~←§~~ for the purpose of:

42 (i) enforcing, litigating, or investigating civil, criminal, or administrative law; or

43 (ii) auditing, if the governmental entity is authorized by state statute to conduct an

44 audit.

44a ~~§~~→ **(c) If a governmental entity is prohibited from providing a record under Subsection**

44b **(2)(b), it shall:**

44c **(i) deny the records request; and**

44d **(ii) inform the person making the request that records requests must be**

44e **submitted to the governmental entity that prepares, owns, or retains the record. ~~←§~~**

45 ~~[(2)] ~~§~~→ ~~[(c)] (d) ~~←§~~~~ A governmental entity may make rules in accordance with Title 63,~~

45a Chapter

46 46a, Utah Administrative Rulemaking Act, specifying where and to whom requests for access

47 shall be directed.

48 (3) (a) As soon as reasonably possible, but no later than ten business days after

49 receiving a written request, or five business days after receiving a written request if the

50 requester demonstrates that expedited response to the record request benefits the public rather

51 than the person, the governmental entity shall respond to the request by:

52 (i) approving the request and providing the record;

53 (ii) denying the request;

54 (iii) notifying the requester that it does not maintain the record and providing, if

55 known, the name and address of the governmental entity that does maintain the record; or

56 (iv) notifying the requester that because of one of the extraordinary circumstances

57 listed in Subsection (4), it cannot immediately approve or deny the request.

58 (b) The notice described in Subsection (3)(a)(iv) shall:

- 59 (i) describe the circumstances relied upon; and
- 60 (ii) specify the date when the records will be available.
- 61 (c) Any person who requests a record to obtain information for a story or report for
- 62 publication or broadcast to the general public is presumed to be acting to benefit the public
- 63 rather than a person.
- 64 (4) The following circumstances constitute "extraordinary circumstances" that allow a
- 65 governmental entity to delay approval or denial by an additional period of time as specified in
- 66 Subsection (5) if the governmental entity determines that due to the extraordinary
- 67 circumstances it cannot respond within the time limits provided in Subsection (3):
- 68 (a) another governmental entity is using the record, in which case the originating
- 69 governmental entity shall promptly request that the governmental entity currently in possession
- 70 return the record;
- 71 (b) another governmental entity is using the record as part of an audit, and returning the
- 72 record before the completion of the audit would impair the conduct of the audit;
- 73 (c) (i) the request is for a voluminous quantity of records or a record series containing a
- 74 substantial number of records;
- 75 (ii) the requester seeks a substantial number of records or records series in requests
- 76 filed within five working days of each other;
- 77 (d) the governmental entity is currently processing a large number of records requests;
- 78 (e) the request requires the governmental entity to review a large number of records to
- 79 locate the records requested;
- 80 (f) the decision to release a record involves legal issues that require the governmental
- 81 entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case
- 82 law;
- 83 (g) segregating information that the requester is entitled to inspect from information
- 84 that the requester is not entitled to inspect requires extensive editing; or
- 85 (h) segregating information that the requester is entitled to inspect from information
- 86 that the requester is not entitled to inspect requires computer programming.
- 87 (5) If one of the extraordinary circumstances listed in Subsection (4) precludes
- 88 approval or denial within the time specified in Subsection (3), the following time limits apply
- 89 to the extraordinary circumstances:

90 (a) for claims under Subsection (4)(a), the governmental entity currently in possession
91 of the record shall return the record to the originating entity within five business days of the
92 request for the return unless returning the record would impair the holder's work;

93 (b) for claims under Subsection (4)(b), the originating governmental entity shall notify
94 the requester when the record is available for inspection and copying;

95 (c) for claims under Subsections (4)(c), (d), and (e), the governmental entity shall:

96 (i) disclose the records that it has located which the requester is entitled to inspect;

97 (ii) provide the requester with an estimate of the amount of time it will take to finish
98 the work required to respond to the request;

99 (iii) complete the work and disclose those records that the requester is entitled to
100 inspect as soon as reasonably possible; and

101 (iv) for any person that does not establish a right to an expedited response as
102 authorized by Subsection (3)(a), a governmental entity may choose to:

103 (A) require the person to provide for copying of the records as provided in Subsection
104 63-2-201(9); or

105 (B) treat a request for multiple records as separate record requests, and respond
106 sequentially to each request;

107 (d) for claims under Subsection (4)(f), the governmental entity shall either approve or
108 deny the request within five business days after the response time specified for the original
109 request has expired;

110 (e) for claims under Subsection (4)(g), the governmental entity shall fulfill the request
111 within 15 business days from the date of the original request; or

112 (f) for claims under Subsection (4)(h), the governmental entity shall complete its
113 programming and disclose the requested records as soon as reasonably possible.

114 (6) (a) If a request for access is submitted to an office of a governmental entity other
115 than that specified by rule in accordance with Subsection (2), the office shall promptly forward
116 the request to the appropriate office.

117 (b) If the request is forwarded promptly, the time limit for response begins when the
118 record is received by the office specified by rule.

119 (7) If the governmental entity fails to provide the requested records or issue a denial
120 within the specified time period, that failure is considered the equivalent of a determination

121 denying access to the record.

Legislative Review Note

as of 12-20-05 12:35 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

Fiscal Note
Bill Number SB0190

Shared Government Records Amendments

06-Feb-06

9:16 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst