

1 **REVISIONS TO GOVERNMENT RECORDS**

2 **ACCESS MANAGEMENT ACT**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Margaret Dayton**

6 House Sponsor: Stephen H. Urquhart

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies Title 63, Chapter 2, Government Records Access and Management
11 Act, by amending sharing of records between government entities provisions and
12 protected records provisions.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ amends sharing provisions to provide procedures for sharing records with the
- 16 Legislature; and
- 17 ▶ clarifies that all bids, including bids and applications submitted in response to
- 18 requests for proposals and grants, are public records after the contract or grant has
- 19 been awarded.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **63-2-206**, as last amended by Laws of Utah 2006, Chapter 174

27 **63-2-304**, as last amended by Laws of Utah 2008, Chapter 3

28

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

30 Section 1. Section **63-2-206** is amended to read:

31 **63-2-206. Sharing records.**

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

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

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

39 (c) is authorized by state statute to conduct an audit and the record is needed for that
40 purpose; [~~or~~]

41 (d) is one that collects information for presentence, probationary, or parole purposes[~~-~~];
42 or

43 (e) (i) is:

44 (A) the Legislature;

45 (B) a legislative committee;

46 (C) a member of the Legislature; or

47 (D) a legislative staff member acting at the request of the Legislature, a legislative
48 committee, or a member of the Legislature; and

49 (ii) requests the record in relation to the Legislature's duties including:

50 (A) the preparation or review of a legislative proposal or legislation;

51 (B) appropriations; or

52 (C) an investigation or review conducted by the Legislature or a legislative committee.

53 (2) (a) A governmental entity may provide a private, controlled, or protected record or
54 record series to another governmental entity, a political subdivision, a government-managed
55 corporation, the federal government, or another state if the requesting entity provides written
56 assurance:

57 (i) that the record or record series is necessary to the performance of the governmental

58 entity's duties and functions;

59 (ii) that the record or record series will be used for a purpose similar to the purpose for
60 which the information in the record or record series was collected or obtained; and

61 (iii) that the use of the record or record series produces a public benefit that outweighs
62 the individual privacy right that protects the record or record series.

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

66 (3) (a) A governmental entity shall provide a private, controlled, or protected record to
67 another governmental entity, a political subdivision, a government-managed corporation, the
68 federal government, or another state if the requesting entity:

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

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

72 (iii) is an entity described in Subsection (1)(a), (b), (c), [~~or~~] (d), or (e).

73 (b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection
74 63-2-304(4).

75 (4) Before disclosing a record or record series under this section to another
76 governmental entity, another state, the United States, a foreign government, or to a contractor
77 or private provider, the originating governmental entity shall:

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

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

84 (5) A governmental entity may disclose a record to another state, the United States, or
85 a foreign government for the reasons listed in Subsections (1) and (2) without complying with

86 the procedures of Subsection (2) or (4) if disclosure is authorized by executive agreement,
87 treaty, federal statute, compact, federal regulation, or state statute.

88 (6) (a) Subject to Subsections (6)(b) and (c), an entity receiving a record under this
89 section is subject to the same restrictions on disclosure of the record as the originating entity.

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

92 (i) the contractor or private provider's use of the record or record series produces a
93 public benefit that outweighs the individual privacy right that protects the record or record
94 series;

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

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

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

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

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

100 (iii) the contractor or private provider gives written assurance to the governmental
101 entity that is providing the record or record series that it will adhere to the restrictions of this
102 Subsection (6)(b).

103 (c) The classification of a record already held by a governmental entity and the
104 applicable restrictions on disclosure of that record are not affected by the governmental entity's
105 receipt under this section of a record with a different classification that contains information that
106 is also included in the previously held record.

107 (7) Notwithstanding any other provision of this section, if a more specific court rule or
108 order, state statute, federal statute, or federal regulation prohibits or requires sharing
109 information, that rule, order, statute, or federal regulation controls.

110 (8) The following records may not be shared under this section:

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

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

115 (9) Records that may evidence or relate to a violation of law may be disclosed to a
116 government prosecutor, peace officer, or auditor.

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

118 **63-2-304. Protected records.**

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

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

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

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

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

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

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

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

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

140 (6) records the disclosure of which would impair governmental procurement
141 proceedings or give an unfair advantage to any person proposing to enter into a contract or

142 agreement with a governmental entity, except, subject to Subsection (1) and (2), that this
143 Subsection (6) does not restrict the right of a person to ~~[see bids]~~ have access to, once the
144 contract or grant has been awarded, a bid, proposal, or application submitted to or by a
145 governmental entity ~~[after bidding has closed;]~~ in response to:

146 (a) a request for bids;

147 (b) a request for proposals;

148 (c) a grant; or

149 (d) other similar document;

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

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

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

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

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

162 (e) the property under consideration for public acquisition is a single family residence
163 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
164 the property as required under Section 78B-6-505;

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

169 (a) the public interest in access outweighs the interests in restricting access, including

170 the governmental entity's interest in maximizing the financial benefit of the transaction; or

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

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

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

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

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

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

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

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

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

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

197 (13) records that, if disclosed, would reveal recommendations made to the Board of

198 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
199 Board of Pardons and Parole, or the Department of Human Services that are based on the
200 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
201 jurisdiction;

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

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

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

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

212 (18) records of communications between a governmental entity and an attorney
213 representing, retained, or employed by the governmental entity if the communications would be
214 privileged as provided in Section 78B-1-137;

215 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
216 from a member of the Legislature; and

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

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

221 (A) members of a legislative body;

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

223 (C) members of a legislative body's staff; and

224 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
225 legislative action or policy may not be classified as protected under this section;

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

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

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

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

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

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

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

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

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

251 (28) records of an institution within the state system of higher education defined in
252 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
253 retention decisions, and promotions, which could be properly discussed in a meeting closed in

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

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

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

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

268 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
269 except as provided in Section 52-4-206;

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

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

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

281 (36) materials to which access must be limited for purposes of securing or maintaining

282 the governmental entity's proprietary protection of intellectual property rights including patents,
283 copyrights, and trade secrets;

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

288 (a) the donor requests anonymity in writing;

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

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

296 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
297 73-18-13;

298 (39) a notification of workers' compensation insurance coverage described in Section
299 34A-2-205;

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

303 (i) unpublished lecture notes;

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

305 (A) relating to research; and

306 (B) of:

307 (I) the institution within the state system of higher education defined in Section
308 53B-1-102; or

309 (II) a sponsor of sponsored research;

- 310 (iii) unpublished manuscripts;
- 311 (iv) creative works in process;
- 312 (v) scholarly correspondence; and
- 313 (vi) confidential information contained in research proposals;
- 314 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public information
- 315 required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 316 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 317 (41) (a) records in the custody or control of the Office of Legislative Auditor General
- 318 that would reveal the name of a particular legislator who requests a legislative audit prior to the
- 319 date that audit is completed and made public; and
- 320 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 321 Office of the Legislative Auditor General is a public document unless the legislator asks that the
- 322 records in the custody or control of the Office of Legislative Auditor General that would reveal
- 323 the name of a particular legislator who requests a legislative audit be maintained as protected
- 324 records until the audit is completed and made public;
- 325 (42) records that provide detail as to the location of an explosive, including a map or
- 326 other document that indicates the location of:
- 327 (a) a production facility; or
- 328 (b) a magazine;
- 329 (43) information contained in the database described in Section 62A-3-311.1;
- 330 (44) information contained in the Management Information System and Licensing
- 331 Information System described in Title 62A, Chapter 4a, Child and Family Services;
- 332 (45) information regarding National Guard operations or activities in support of the
- 333 National Guard's federal mission;
- 334 (46) records provided by any pawn or secondhand business to a law enforcement
- 335 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
- 336 Secondhand Merchandise Transaction Information Act;
- 337 (47) information regarding food security, risk, and vulnerability assessments performed

338 by the Department of Agriculture and Food;

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

342 (a) the safety of the general public; or

343 (b) the security of:

344 (i) governmental property;

345 (ii) governmental programs; or

346 (iii) the property of a private person who provides the Division of Homeland Security
347 information;

348 (49) records of the Department of Agriculture and Food relating to the National Animal
349 Identification System or any other program that provides for the identification, tracing, or
350 control of livestock diseases, including any program established under Title 4, Chapter 24, Utah
351 Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
352 Quarantine;

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

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

357 (b) information or records related to a complaint received by the Department of Health
358 from an anonymous complainant regarding a child care program or residential child care; and

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

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

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

- 366 (i) the nature of the law, ordinance, rule, or order; and
367 (ii) the individual complying with the law, ordinance, rule, or order.