

1 **ACCESS TO RESEARCH WORKERS'**

2 **PERSONAL INFORMATION**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Gregory S. Bell**

6 House Sponsor: Douglas C. Aagard

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Government Records Access and Management Act to add
11 protected status to certain information.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ provides that the name, addresses, and phone numbers of individuals who perform,
15 or provide supplies or services for, medical or scientific research at an institution
16 within the state system of higher education that is conducted using animals be
17 classified as protected documents.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **63-2-304**, as last amended by Laws of Utah 2008, Chapter 3

25

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

27 Section 1. Section **63-2-304** is amended to read:

28 **63-2-304. Protected records.**

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

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

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

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

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

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

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

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

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

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

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

57 (a) public interest in obtaining access to the information outweighs the governmental

58 entity's need to acquire the property on the best terms possible;

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

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

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

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

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

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

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

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

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

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

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

86 hearing;

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

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

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

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

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

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

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

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

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

113 (17) records disclosing an attorney's work product, including the mental impressions or

114 legal theories of an attorney or other representative of a governmental entity concerning
115 litigation;

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

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

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

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

125 (A) members of a legislative body;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

168 (31) records provided by the United States or by a government entity outside the state
169 that are given to the governmental entity with a requirement that they be managed as protected

170 records if the providing entity certifies that the record would not be subject to public disclosure
171 if retained by it;

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

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

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

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

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

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

192 (a) the donor requests anonymity in writing;

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

195 (c) except for an institution within the state system of higher education defined in
196 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in
197 educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over

198 the donor, a member of the donor's immediate family, or any entity owned or controlled by the
199 donor or the donor's immediate family;

200 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
201 73-18-13;

202 (39) a notification of workers' compensation insurance coverage described in Section
203 34A-2-205;

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

207 (i) unpublished lecture notes;

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

209 (A) relating to research; and

210 (B) of:

211 (I) the institution within the state system of higher education defined in Section
212 53B-1-102; or

213 (II) a sponsor of sponsored research;

214 (iii) unpublished manuscripts;

215 (iv) creative works in process;

216 (v) scholarly correspondence; and

217 (vi) confidential information contained in research proposals;

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

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

221 (41) (a) records in the custody or control of the Office of Legislative Auditor General

222 that would reveal the name of a particular legislator who requests a legislative audit prior to the
223 date that audit is completed and made public; and

224 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
225 Office of the Legislative Auditor General is a public document unless the legislator asks that the

226 records in the custody or control of the Office of Legislative Auditor General that would reveal
227 the name of a particular legislator who requests a legislative audit be maintained as protected
228 records until the audit is completed and made public;

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

231 (a) a production facility; or

232 (b) a magazine;

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

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

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

238 (46) records provided by any pawn or secondhand business to a law enforcement
239 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
240 Secondhand Merchandise Transaction Information Act;

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

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

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

247 (b) the security of:

248 (i) governmental property;

249 (ii) governmental programs; or

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

252 (49) records of the Department of Agriculture and Food relating to the National Animal
253 Identification System or any other program that provides for the identification, tracing, or

254 control of livestock diseases, including any program established under Title 4, Chapter 24, Utah
255 Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
256 Quarantine;

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

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

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

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

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

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

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

271 (ii) the individual complying with the law, ordinance, rule, or order~~[-];~~ and

272 (52) the name, home address, work addresses, and telephone numbers of an individual
273 that is engaged in, or that provides goods or services for, medical or scientific research that is:

274 (a) conducted within the state system of higher education, as defined in Section
275 53B-1-102; and

276 (b) conducted using animals.