

**GOVERNMENT RECORDS ACCESS AND
MANAGEMENT ACT AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas C. Aagard

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions of the Government Records Access and Management Act related to protected litigation records.

Highlighted Provisions:

This bill:

► clarifies that records ~~shall~~ may be ~~shall~~ [may] classified as protected if they are prepared in

anticipation of litigation;

► clarifies that work product records may be classified as protected if the record involves anticipated or pending litigation;

► provides that records concerning a governmental entity's strategy may be classified as protected if the record is prepared for anticipated litigation, rather than only for pending litigation;

► prohibits a governmental entity's chief administrative officer, the records committee, and a court from releasing certain protected records via means of a

balancing test ~~shall~~ unless it is determined, shall by a preponderance of the evidence or ~~shall~~ by clear and convincing evidence, shall as applicable, ~~shall~~ that the public

interest favoring access to the record outweighs the interest favoring restriction of access to the record ~~shall~~ ; and

► makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:



28 This bill provides an immediate effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **63G-2-305**, as last amended by Laws of Utah 2008, Chapters 3, 87, 95, 101, 111, 161,
32 196, 248, 352 and renumbered and amended by Laws of Utah 2008, Chapter 382

33 **63G-2-401**, as renumbered and amended by Laws of Utah 2008, Chapter 382

34 **63G-2-403**, as renumbered and amended by Laws of Utah 2008, Chapter 382

35 **63G-2-404**, as renumbered and amended by Laws of Utah 2008, Chapter 382

36 ENACTS:

37 **63G-2-406**, Utah Code Annotated 1953



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

40 Section 1. Section **63G-2-305** is amended to read:

41 **63G-2-305. Protected records.**

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

43 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
44 has provided the governmental entity with the information specified in Section 63G-2-309;

45 (2) commercial information or nonindividual financial information obtained from a
46 person if:

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

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

52 (c) the person submitting the information has provided the governmental entity with
53 the information specified in Section 63G-2-309;

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

58 (4) records the disclosure of which could cause commercial injury to, or confer a

59 competitive advantage upon a potential or actual competitor of, a commercial project entity as
60 defined in Subsection 11-13-103(4);

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

63 (6) records the disclosure of which would impair governmental procurement
64 proceedings or give an unfair advantage to any person proposing to enter into a contract or
65 agreement with a governmental entity, except, subject to Subsection (1) and (2), that this
66 Subsection (6) does not restrict the right of a person to have access to, once the contract or
67 grant has been awarded, a bid, proposal, or application submitted to or by a governmental
68 entity in response to:

69 (a) a request for bids;

70 (b) a request for proposals;

71 (c) a grant; or

72 (d) other similar document;

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

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

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

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

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

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

88 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
89 compensated transaction of real or personal property including intellectual property, which, if

90 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
91 of the subject property, unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

131 (16) records prepared by or on behalf of a governmental entity [~~society~~] in anticipation
132 of litigation that are not available under the rules of discovery;

133 (17) records disclosing an attorney's work product, including the mental impressions or
134 legal theories of an attorney or other representative of a governmental entity [~~concerning~~]
135 involving anticipated or pending litigation;

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

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

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

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

145 (A) members of a legislative body;

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

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

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

150 (20) (a) records in the custody or control of the Office of Legislative Research and
151 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated

152 legislation or contemplated course of action before the legislator has elected to support the
153 legislation or course of action, or made the legislation or course of action public; and
154 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
155 Office of Legislative Research and General Counsel is a public document unless a legislator
156 asks that the records requesting the legislation be maintained as protected records until such
157 time as the legislator elects to make the legislation or course of action public;

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

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

162 (23) records concerning a governmental entity's strategy about:

163 (a) collective bargaining; or
164 (b) anticipated or pending litigation;

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

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

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

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

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

182 (29) records of the governor's office, including budget recommendations, legislative

183 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
184 policies or contemplated courses of action before the governor has implemented or rejected
185 those policies or courses of action or made them public;

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

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

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

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

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

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

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

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

213 (a) the donor requests anonymity in writing;

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

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

221 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
222 73-18-13;

223 (39) a notification of workers' compensation insurance coverage described in Section
224 34A-2-205;

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

228 (i) unpublished lecture notes;

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

230 (A) relating to research; and

231 (B) of:

232 (I) the institution within the state system of higher education defined in Section
233 53B-1-102; or

234 (II) a sponsor of sponsored research;

235 (iii) unpublished manuscripts;

236 (iv) creative works in process;

237 (v) scholarly correspondence; and

238 (vi) confidential information contained in research proposals;

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

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

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

245 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
246 Office of the Legislative Auditor General is a public document unless the legislator asks that
247 the records in the custody or control of the Office of Legislative Auditor General that would
248 reveal the name of a particular legislator who requests a legislative audit be maintained as
249 protected records until the audit is completed and made public;

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

252 (a) a production facility; or

253 (b) a magazine;

254 (43) information:

255 (a) contained in the statewide database of the Division of Aging and Adult Services
256 created by Section 62A-3-311.1; or

257 (b) received or maintained in relation to the Identity Theft Reporting Information
258 System (IRIS) established under Section 67-5-22;

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

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

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

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

268 (48) except to the extent that the record is exempt from this chapter pursuant to Section
269 63G-2-106, records related to an emergency plan or program prepared or maintained by the
270 Division of Homeland Security the disclosure of which would jeopardize:

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

272 (b) the security of:

273 (i) governmental property;

274 (ii) governmental programs; or

275 (iii) the property of a private person who provides the Division of Homeland Security

276 information;

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

282 (50) as provided in Section 26-39-501:

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

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

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

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

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

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

296 (ii) the individual complying with the law, ordinance, rule, or order;

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

299 (a) conducted within the state system of higher education, as defined in Section
300 53B-1-102; and

301 (b) conducted using animals;

302 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
303 Private Proposal Program, to the extent not made public by rules made under that chapter;

304 (54) information collected and a report prepared by the Judicial Performance
305 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
306 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,

307 the information or report;

308 (55) (a) records of the Utah Educational Savings Plan Trust created under Section
309 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

310 (b) proposals submitted to the Utah Educational Savings Plan Trust; and

311 (c) contracts entered into by the Utah Educational Savings Plan Trust and the related
312 payments; and

313 (56) records contained in the Management Information System created in Section
314 62A-4a-1003.

315 Section 2. Section **63G-2-401** is amended to read:

316 **63G-2-401. Appeal to head of governmental entity.**

317 (1) (a) Any person aggrieved by a governmental entity's access determination under
318 this chapter, including a person not a party to the governmental entity's proceeding, may appeal
319 the determination within 30 days to the chief administrative officer of the governmental entity
320 by filing a notice of appeal.

321 (b) If a governmental entity claims extraordinary circumstances and specifies the date
322 when the records will be available under Subsection 63G-2-204(3), and, if the requester
323 believes the extraordinary circumstances do not exist or that the time specified is unreasonable,
324 the requester may appeal the governmental entity's claim of extraordinary circumstances or date
325 for compliance within 30 days after notification of a claim of extraordinary circumstances by
326 the governmental entity, despite the lack of a "determination" or its equivalent under
327 Subsection 63G-2-204(7).

328 (2) The notice of appeal shall contain the following information:

329 (a) the petitioner's name, mailing address, and daytime telephone number; and

330 (b) the relief sought.

331 (3) The petitioner may file a short statement of facts, reasons, and legal authority in
332 support of the appeal.

333 (4) (a) If the appeal involves a record that is the subject of a business confidentiality
334 claim under Section 63G-2-309, the chief administrative officer shall:

335 (i) send notice of the requester's appeal to the business confidentiality claimant within
336 three business days after receiving notice, except that if notice under this section must be given
337 to more than 35 persons, it shall be given as soon as reasonably possible; and

338 (ii) send notice of the business confidentiality claim and the schedule for the chief
339 administrative officer's determination to the requester within three business days after receiving
340 notice of the requester's appeal.

341 (b) The claimant shall have seven business days after notice is sent by the
342 administrative officer to submit further support for the claim of business confidentiality.

343 (5) (a) The chief administrative officer shall make a determination on the appeal within
344 the following period of time:

345 (i) within five business days after the chief administrative officer's receipt of the notice
346 of appeal; or

347 (ii) within twelve business days after the governmental entity sends the requester's
348 notice of appeal to a person who submitted a claim of business confidentiality.

349 (b) If the chief administrative officer fails to make a determination within the time
350 specified in Subsection (5)(a), the failure shall be considered the equivalent of an order denying
351 the appeal.

352 (c) The provisions of this section notwithstanding, the parties participating in the
353 proceeding may, by agreement, extend the time periods specified in this section.

354 (6) ~~[The]~~ Except as provided in Section 63G-2-406, the chief administrative officer
355 may, upon consideration and weighing of the various interests and public policies pertinent to
356 the classification and disclosure or nondisclosure, order the disclosure of information properly
357 classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if
358 the interests favoring access outweigh the interests favoring restriction of access.

359 (7) The governmental entity shall send written notice of the determination of the chief
360 administrative officer to all participants. If the chief administrative officer affirms the denial in
361 whole or in part, the denial shall include a statement that the requester has the right to appeal
362 the denial to either the records committee or district court, the time limits for filing an appeal,
363 and the name and business address of the executive secretary of the records committee.

364 (8) A person aggrieved by a governmental entity's classification or designation
365 determination under this chapter, but who is not requesting access to the records, may appeal
366 that determination using the procedures provided in this section. If a nonrequester is the only
367 appellant, the procedures provided in this section shall apply, except that the determination on
368 the appeal shall be made within 30 days after receiving the notice of appeal.

369 (9) The duties of the chief administrative officer under this section may be delegated.
370 Section 3. Section **63G-2-403** is amended to read:

371 **63G-2-403. Appeals to the records committee.**

372 (1) A petitioner, including an aggrieved person who did not participate in the appeal to
373 the governmental entity's chief administrative officer, may appeal to the records committee by
374 filing a notice of appeal with the executive secretary no later than:

375 (a) 30 days after the chief administrative officer of the governmental entity has granted
376 or denied the record request in whole or in part, including a denial under Subsection
377 63G-2-204(7);

378 (b) 45 days after the original request for a record if:

379 (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

380 (ii) the chief administrative officer failed to make a determination under Section
381 63G-2-401.

382 (2) The notice of appeal shall contain the following information:

383 (a) the petitioner's name, mailing address, and daytime telephone number;

384 (b) a copy of any denial of the record request; and

385 (c) the relief sought.

386 (3) The petitioner may file a short statement of facts, reasons, and legal authority in
387 support of the appeal.

388 (4) (a) Except as provided in Subsection (4)(b), no later than five business days after
389 receiving a notice of appeal, the executive secretary of the records committee shall:

390 (i) schedule a hearing for the records committee to discuss the appeal at the next
391 regularly scheduled committee meeting falling at least 14 days after the date the notice of
392 appeal is filed but no longer than 52 calendar days after the date the notice of appeal was filed
393 except that the records committee may schedule an expedited hearing upon application of the
394 petitioner and good cause shown;

395 (ii) send a copy of the notice of hearing to the petitioner; and

396 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing
397 to:

398 (A) each member of the records committee;

399 (B) the records officer and the chief administrative officer of the governmental entity

400 from which the appeal originated;

401 (C) any person who made a business confidentiality claim under Section 63G-2-309 for
402 a record that is the subject of the appeal; and

403 (D) all persons who participated in the proceedings before the governmental entity's
404 chief administrative officer.

405 (b) (i) The executive secretary of the records committee may decline to schedule a
406 hearing if the record series that is the subject of the appeal has been found by the committee in
407 a previous hearing involving the same government entity to be appropriately classified as
408 private, controlled, or protected.

409 (ii) (A) If the executive secretary of the records committee declines to schedule a
410 hearing, the executive secretary of the records committee shall send a notice to the petitioner
411 indicating that the request for hearing has been denied and the reason for the denial.

412 (B) The committee shall make rules to implement this section as provided by Title
413 63G, Chapter 3, Utah Administrative Rulemaking Act.

414 (5) (a) A written statement of facts, reasons, and legal authority in support of the
415 governmental entity's position must be submitted to the executive secretary of the records
416 committee not later than five business days before the hearing.

417 (b) The governmental entity shall send a copy of the written statement to the petitioner
418 by first class mail, postage prepaid. The executive secretary shall forward a copy of the written
419 statement to each member of the records committee.

420 (6) (a) No later than ten business days after the notice of appeal is sent by the executive
421 secretary, a person whose legal interests may be substantially affected by the proceeding may
422 file a request for intervention before the records committee.

423 (b) Any written statement of facts, reasons, and legal authority in support of the
424 intervener's position shall be filed with the request for intervention.

425 (c) The person seeking intervention shall provide copies of the statement described in
426 Subsection (6)(b) to all parties to the proceedings before the records committee.

427 (7) The records committee shall hold a hearing within the period of time described in
428 Subsection (4).

429 (8) At the hearing, the records committee shall allow the parties to testify, present
430 evidence, and comment on the issues. The records committee may allow other interested

431 persons to comment on the issues.

432 (9) (a) The records committee may review the disputed records. However, if the
433 committee is weighing the various interests under Subsection (11), the committee must review
434 the disputed records. The review shall be in camera.

435 (b) Members of the records committee may not disclose any information or record
436 reviewed by the committee in camera unless the disclosure is otherwise authorized by this
437 chapter.

438 (10) (a) Discovery is prohibited, but the records committee may issue subpoenas or
439 other orders to compel production of necessary evidence.

440 (b) When the subject of a records committee subpoena disobeys or fails to comply with
441 the subpoena, the records committee may file a motion for an order to compel obedience to the
442 subpoena with the district court.

443 (c) The records committee's review shall be de novo.

444 (11) (a) No later than five business days after the hearing, the records committee shall
445 issue a signed order either granting the petition in whole or in part or upholding the
446 determination of the governmental entity in whole or in part.

447 (b) ~~[The]~~ Except as provided in Section 63G-2-406, the records committee may, upon
448 consideration and weighing of the various interests and public policies pertinent to the
449 classification and disclosure or nondisclosure, order the disclosure of information properly
450 classified as private, controlled, or protected if the public interest favoring access outweighs the
451 interest favoring restriction of access.

452 (c) In making a determination under Subsection (11)(b), the records committee shall
453 consider and, where appropriate, limit the requester's use and further disclosure of the record in
454 order to protect:

455 (i) privacy interests in the case of a private or controlled record;

456 (ii) business confidentiality interests in the case of a record protected under Subsection
457 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

458 (iii) privacy interests or the public interest in the case of other protected records.

459 (12) The order of the records committee shall include:

460 (a) a statement of reasons for the decision, including citations to this chapter, court rule
461 or order, another state statute, federal statute, or federal regulation that governs disclosure of

462 the record, provided that the citations do not disclose private, controlled, or protected
463 information;

464 (b) a description of the record or portions of the record to which access was ordered or
465 denied, provided that the description does not disclose private, controlled, or protected
466 information or information exempt from disclosure under Subsection 63G-2-201(3)(b);

467 (c) a statement that any party to the proceeding before the records committee may
468 appeal the records committee's decision to district court; and

469 (d) a brief summary of the appeals process, the time limits for filing an appeal, and a
470 notice that in order to protect its rights on appeal, the party may wish to seek advice from an
471 attorney.

472 (13) If the records committee fails to issue a decision within 57 calendar days of the
473 filing of the notice of appeal, that failure shall be considered the equivalent of an order denying
474 the appeal. The petitioner shall notify the records committee in writing if the petitioner
475 considers the appeal denied.

476 (14) (a) Unless a notice of intent to appeal is filed under Subsection (14)(b), each party
477 to the proceeding shall comply with the order of the records committee.

478 (b) If a party disagrees with the order of the records committee, that party may file a
479 notice of intent to appeal the order of the records committee.

480 (c) If the records committee orders the governmental entity to produce a record and no
481 appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a
482 record, the governmental entity shall:

483 (i) produce the record; and

484 (ii) file a notice of compliance with the records committee.

485 (d) (i) If the governmental entity that is ordered to produce a record fails to file a notice
486 of compliance or a notice of intent to appeal, the records committee may do either or both of
487 the following:

488 (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or

489 (B) send written notice of the governmental entity's noncompliance to:

490 (I) the governor for executive branch entities;

491 (II) the Legislative Management Committee for legislative branch entities; and

492 (III) the Judicial Council for judicial branch agencies entities.

493 (ii) In imposing a civil penalty, the records committee shall consider the gravity and
494 circumstances of the violation, including whether the failure to comply was due to neglect or
495 was willful or intentional.

496 Section 4. Section **63G-2-404** is amended to read:

497 **63G-2-404. Judicial review.**

498 (1) (a) Any party to a proceeding before the records committee may petition for judicial
499 review by the district court of the records committee's order.

500 (b) The petition shall be filed no later than 30 days after the date of the records
501 committee's order.

502 (c) The records committee is a necessary party to the petition for judicial review.

503 (d) The executive secretary of the records committee shall be served with notice of the
504 petition in accordance with the Utah Rules of Civil Procedure.

505 (2) (a) A requester may petition for judicial review by the district court of a
506 governmental entity's determination as specified in Subsection 63G-2-402(1)(b).

507 (b) The requester shall file a petition no later than:

508 (i) 30 days after the governmental entity has responded to the records request by either
509 providing the requested records or denying the request in whole or in part;

510 (ii) 35 days after the original request if the governmental entity failed to respond to the
511 request; or

512 (iii) 45 days after the original request for records if:

513 (A) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

514 (B) the chief administrative officer failed to make a determination under Section
515 63G-2-401.

516 (3) The petition for judicial review shall be a complaint governed by the Utah Rules of
517 Civil Procedure and shall contain:

518 (a) the petitioner's name and mailing address;

519 (b) a copy of the records committee order from which the appeal is taken, if the
520 petitioner brought a prior appeal to the records committee;

521 (c) the name and mailing address of the governmental entity that issued the initial
522 determination with a copy of that determination;

523 (d) a request for relief specifying the type and extent of relief requested; and

524 (e) a statement of the reasons why the petitioner is entitled to relief.

525 (4) If the appeal is based on the denial of access to a protected record, the court shall
526 allow the claimant of business confidentiality to provide to the court the reasons for the claim
527 of business confidentiality.

528 (5) All additional pleadings and proceedings in the district court are governed by the
529 Utah Rules of Civil Procedure.

530 (6) The district court may review the disputed records. The review shall be in camera.

531 (7) The court shall:

532 (a) make its decision de novo, but allow introduction of evidence presented to the
533 records committee;

534 (b) determine all questions of fact and law without a jury; and

535 (c) decide the issue at the earliest practical opportunity.

536 (8) (a) ~~[The]~~ Except as provided in Section 63G-2-406, the court may, upon
537 consideration and weighing of the various interests and public policies pertinent to the
538 classification and disclosure or nondisclosure, order the disclosure of information properly
539 classified as private, controlled, or protected if the interest favoring access outweighs the
540 interest favoring restriction of access.

541 (b) The court shall consider and, where appropriate, limit the requester's use and
542 further disclosure of the record in order to protect privacy interests in the case of private or
543 controlled records, business confidentiality interests in the case of records protected under
544 Subsections 63G-2-305(1) and (2), and privacy interests or the public interest in the case of
545 other protected records.

546 Section 5. Section **63G-2-406** is enacted to read:

547 **63G-2-406. ~~§~~→ [Restrictions on] Evidentiary standards for ~~←~~§ release of certain**
547a **enforcement and litigation records.**

548 **~~It~~→ [The provisions of Subsections 63G-2-401(6), 63G-2-403(11)(b), and 63G-2-404(8)(a)**
549 **do not apply to records that are classified as protected under Subsection 63G-2-305(9), (10),**
550 **(16), (17), (18), (23), (24), or (33).] ~~§~~→ **[Records that are] (1) A record that is ~~←~~§ classified as**
550a1 **protected under ~~§~~→ [Subsections] Subsection ~~←~~§**
550a **63G-2-305(9), ~~§~~→ [(10);] ~~←~~§ (16), (17), (18), (23), (24), or (33) may be ordered to be disclosed**
550b1 **under the**
550b **provisions of Subsections 63G-2-401(6), 63G-2-403(11)(b), and 63G-2-404(8)(a) only if the**
550c **person or party seeking disclosure of the record has established, ~~§~~→ by a preponderance of**
550d **the evidence, that the public interest favoring access outweighs the interest favoring restriction**
550e **of access.****

550f **(2) A record that is classified as protected under Subsection 65G-2-305(10) may be**
550g **ordered to be disclosed under the provisions of Subsections 63G-2-401(6),**

550h 63G-2-403(11)(b), and 63G-2-404(8) only if the person or party seeking disclosure of the record
550i has established, ←§ by clear and convincing
550d evidence, that the public interest favoring access outweighs the interest §→ [in] ←§ favoring
550e restriction
550e of access. ←Ĥ

551 Section 6. **Effective date.**

552 If approved by two-thirds of all the members elected to each house, this bill takes effect
553 upon approval by the governor, or the day following the constitutional time limit of Utah
554 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,

555 the date of veto override.

Legislative Review Note
as of **1-23-09 9:57 AM**

Office of Legislative Research and General Counsel

H.B. 122 - Government Records Access and Managemeng Act Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
