

1 **GOVERNMENT RECORDS ACCESS AND**
2 **MANAGEMENT ACT AMENDMENTS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Christopher N. Herrod**

6 Senate Sponsor: Curtis S. Bramble

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions in the Government Records Access and Management Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ requires a record to be produced in an electronic format upon request if the
- 14 governmental entity currently maintains the record in an electronic format, subject
- 15 to certain restrictions;
- 16 ▶ provides a five business day deadline for a governmental entity to inform a person
- 17 who requests an expedited response that the governmental entity has determined
- 18 that the request does not qualify for an expedited response;
- 19 ▶ modifies and clarifies language dealing with requirements for initial responses to
- 20 records requests; and
- 21 ▶ makes technical changes.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 **AMENDS:**

28 **63G-2-201**, as renumbered and amended by Laws of Utah 2008, Chapter 382

29 **63G-2-204**, as renumbered and amended by Laws of Utah 2008, Chapter 382

30

31 *Be it enacted by the Legislature of the state of Utah:*32 Section 1. Section **63G-2-201** is amended to read:33 **63G-2-201. Right to inspect records and receive copies of records.**34 (1) Every person has the right to inspect a public record free of charge, and the right to
35 take a copy of a public record during normal working hours, subject to Sections 63G-2-203
36 and 63G-2-204.

37 (2) A record is public unless otherwise expressly provided by statute.

38 (3) The following records are not public:

39 (a) a record that is private, controlled, or protected under Sections 63G-2-302,
40 63G-2-303, 63G-2-304, and 63G-2-305; and41 (b) a record to which access is restricted pursuant to court rule, another state statute,
42 federal statute, or federal regulation, including records for which access is governed or
43 restricted as a condition of participation in a state or federal program or for receiving state or
44 federal funds.45 (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or
46 63G-2-305 may be classified private, controlled, or protected.47 (5) (a) A governmental entity may not disclose a record that is private, controlled, or
48 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section
49 63G-2-202, 63G-2-206, or 63G-2-303.50 (b) A governmental entity may disclose a record that is private under Subsection
51 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in
52 Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee,
53 determines that:

54 (i) there is no interest in restricting access to the record; or

55 (ii) the interests favoring access outweighs the interest favoring restriction of access.

56 (c) In addition to the disclosure under Subsection (5)(b), a governmental entity may
57 disclose a record that is protected under Subsection 63G-2-305(51) if:

- 58 (i) the head of the governmental entity, or a designee, determines that the disclosure:
- 59 (A) is mutually beneficial to:
- 60 (I) the subject of the record;
- 61 (II) the governmental entity; and
- 62 (III) the public; and
- 63 (B) serves a public purpose related to:
- 64 (I) public safety; or
- 65 (II) consumer protection; and
- 66 (ii) the person who receives the record from the governmental entity agrees not to use
- 67 or allow the use of the record for advertising or solicitation purposes.

68 (6) (a) The disclosure of a record to which access is governed or limited pursuant to
69 court rule, another state statute, federal statute, or federal regulation, including a record for
70 which access is governed or limited as a condition of participation in a state or federal
71 program or for receiving state or federal funds, is governed by the specific provisions of that
72 statute, rule, or regulation.

73 (b) This chapter applies to records described in Subsection (6)(a) insofar as this
74 chapter is not inconsistent with the statute, rule, or regulation.

75 (7) A governmental entity shall provide a person with a certified copy of a record if:

- 76 (a) the person requesting the record has a right to inspect it;
- 77 (b) the person identifies the record with reasonable specificity; and
- 78 (c) the person pays the lawful fees.

79 (8) (a) In response to a request, a governmental entity is not required to:

- 80 (i) create a record;
- 81 (ii) compile, format, manipulate, package, summarize, or tailor information;
- 82 (iii) provide a record in a particular format, medium, or program not currently
- 83 maintained by the governmental entity;

84 (iv) fulfill a person's records request if the request unreasonably duplicates prior
85 records requests from that person; or

86 (v) fill a person's records request if:

87 (A) the record requested is accessible in the identical physical form and content in a
88 public publication or product produced by the governmental entity receiving the request;

89 (B) the governmental entity provides the person requesting the record with the public
90 publication or product; and

91 (C) the governmental entity specifies where the record can be found in the public
92 publication or product.

93 (b) Upon request, a governmental entity may provide a record in a particular form
94 under Subsection (8)(a)(ii) or (iii) if:

95 (i) the governmental entity determines it is able to do so without unreasonably
96 interfering with the governmental entity's duties and responsibilities; and

97 (ii) the requester agrees to pay the governmental entity for providing the record in the
98 requested form in accordance with Section 63G-2-203.

99 (9) (a) A governmental entity may allow a person requesting more than 50 pages of
100 records to copy the records if:

101 (i) the records are contained in files that do not contain records that are exempt from
102 disclosure, or the records may be segregated to remove private, protected, or controlled
103 information from disclosure; and

104 (ii) the governmental entity provides reasonable safeguards to protect the public from
105 the potential for loss of a public record.

106 (b) When the requirements of Subsection (9)(a) are met, the governmental entity may:

107 (i) provide the requester with the facilities for copying the requested records and
108 require that the requester make the copies; or

109 (ii) allow the requester to provide the requester's own copying facilities and personnel
110 to make the copies at the governmental entity's offices and waive the fees for copying the
111 records.

112 (10) (a) A governmental entity that owns an intellectual property right and that offers
113 the intellectual property right for sale or license may control by ordinance or policy the

114 duplication and distribution of the material based on terms the governmental entity considers
115 to be in the public interest.

116 (b) Nothing in this chapter shall be construed to limit or impair the rights or
117 protections granted to the governmental entity under federal copyright or patent law as a result
118 of its ownership of the intellectual property right.

119 (11) A governmental entity may not use the physical form, electronic or otherwise, in
120 which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and
121 receive a copy of a record under this chapter.

122 (12) ~~[A]~~ Subject to the requirements of Subsection (8), a governmental entity [may]
123 shall provide access to an electronic copy of a record in lieu of providing access to its paper
124 equivalent~~[;]~~ if:

125 (a) the person making the request requests or states a preference for an electronic
126 copy;

127 (b) the governmental entity currently maintains the record in an electronic format that
128 is reproducible and may be provided without reformatting or conversion; and

129 (c) the electronic copy of the record:

130 (i) does not disclose other records that are exempt from disclosure; or

131 (ii) may be segregated to protect private, protected, or controlled information from
132 disclosure without the undue expenditure of public resources or funds.

133 Section 2. Section **63G-2-204** is amended to read:

134 **63G-2-204. Requests -- Time limit for response and extraordinary**
135 **circumstances.**

136 (1) A person making a request for a record shall furnish the governmental entity with a
137 written request containing:

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

139 and

140 (b) a description of the record requested that identifies the record with reasonable
141 specificity.

142 (2) (a) Subject to Subsection (2)(b), a person making a request for a record shall
143 submit the request to the governmental entity that prepares, owns, or retains the record.

144 (b) In response to a request for a record, a governmental entity may not provide a
145 record that it has received under Section 63G-2-206 as a shared record if the record was shared
146 for the purpose of auditing, if the governmental entity is authorized by state statute to conduct
147 an audit.

148 (c) If a governmental entity is prohibited from providing a record under Subsection
149 (2)(b), it shall:

150 (i) deny the records request; and

151 (ii) inform the person making the request that records requests must be submitted to
152 the governmental entity that prepares, owns, or retains the record.

153 (d) A governmental entity may make rules in accordance with Title 63G, Chapter 3,
154 Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall
155 be directed.

156 (3) ~~[(a) As]~~ After receiving a request for a record, a governmental entity shall:

157 (a) review each request that seeks an expedited response and notify, within five
158 business days after receiving the request, each requester that has not demonstrated that their
159 record request benefits the public rather than the person that their response will not be
160 expedited; and

161 (b) as soon as reasonably possible, but no later than 10 business days after receiving a
162 written request, or five business days after receiving a written request if the requester
163 demonstrates that expedited response to the record request benefits the public rather than the
164 person~~[, the governmental entity shall respond to the request by]:~~

165 (i) ~~[approving]~~ approve the request and ~~[providing]~~ provide a copy of the record;

166 (ii) ~~[denying]~~ deny the request in accordance with the procedures and requirements of
167 Section 63G-2-205;

168 (iii) ~~[notifying]~~ notify the requester that it does not maintain the record requested and
169 ~~[providing]~~ provide, if known, the name and address of the governmental entity that does

170 maintain the record; or

171 (iv) ~~[notifying]~~ notify the requester that because of one of the extraordinary
172 circumstances listed in Subsection ~~[(4)]~~ (5), it cannot immediately approve or deny the
173 request~~[-]~~, and include with the notice:

174 ~~[(b) The notice described in Subsection (3)(a)(iv) shall:]~~

175 ~~[(i) describe the circumstances relied upon; and]~~

176 (A) a description of the circumstances that constitute the extraordinary circumstances;
177 and

178 ~~[(ii) specify]~~ (B) the date when the records will be available, consistent with the
179 requirements of Subsection (6).

180 ~~[(c)]~~ (4) Any person who requests a record to obtain information for a story or report
181 for publication or broadcast to the general public is presumed to be acting to benefit the public
182 rather than a person.

183 ~~[(4)]~~ (5) The following circumstances constitute "extraordinary circumstances" that
184 allow a governmental entity to delay approval or denial by an additional period of time as
185 specified in Subsection ~~[(5)]~~ (6) if the governmental entity determines that due to the
186 extraordinary circumstances it cannot respond within the time limits provided in Subsection
187 (3):

188 (a) another governmental entity is using the record, in which case the originating
189 governmental entity shall promptly request that the governmental entity currently in
190 possession return the record;

191 (b) another governmental entity is using the record as part of an audit, and returning
192 the record before the completion of the audit would impair the conduct of the audit;

193 (c) (i) the request is for a voluminous quantity of records or a record series containing
194 a substantial number of records;

195 (ii) the requester seeks a substantial number of records or records series in requests
196 filed within five working days of each other;

197 (d) the governmental entity is currently processing a large number of records requests;

198 (e) the request requires the governmental entity to review a large number of records to
199 locate the records requested;

200 (f) the decision to release a record involves legal issues that require the governmental
201 entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case
202 law;

203 (g) segregating information that the requester is entitled to inspect from information
204 that the requester is not entitled to inspect requires extensive editing; or

205 (h) segregating information that the requester is entitled to inspect from information
206 that the requester is not entitled to inspect requires computer programming.

207 [~~5~~] (6) If one of the extraordinary circumstances listed in Subsection [~~4~~] (5)
208 precludes approval or denial within the time specified in Subsection (3), the following time
209 limits apply to the extraordinary circumstances:

210 (a) for claims under Subsection [~~4~~] (5)(a), the governmental entity currently in
211 possession of the record shall return the record to the originating entity within five business
212 days of the request for the return unless returning the record would impair the holder's work;

213 (b) for claims under Subsection [~~4~~] (5)(b), the originating governmental entity shall
214 notify the requester when the record is available for inspection and copying;

215 (c) for claims under Subsections [~~4~~] (5)(c), (d), and (e), the governmental entity
216 shall:

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

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

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

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

224 (A) require the person to provide for copying of the records as provided in Subsection
225 63G-2-201(9); or

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

228 (d) for claims under Subsection [~~(4)~~] (5)(f), the governmental entity shall either
229 approve or deny the request within five business days after the response time specified for the
230 original request has expired;

231 (e) for claims under Subsection [~~(4)~~] (5)(g), the governmental entity shall fulfill the
232 request within 15 business days from the date of the original request; or

233 (f) for claims under Subsection [~~(4)~~] (5)(h), the governmental entity shall complete its
234 programming and disclose the requested records as soon as reasonably possible.

235 [~~(6)~~] (7) (a) If a request for access is submitted to an office of a governmental entity
236 other than that specified by rule in accordance with Subsection (2), the office shall promptly
237 forward the request to the appropriate office.

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

240 [~~(7)~~] (8) If the governmental entity fails to provide the requested records or issue a
241 denial within the specified time period, that failure is considered the equivalent of a
242 determination denying access to the record.