

**Representative Kraig Powell** proposes the following substitute bill:

**GOVERNMENT RECORDS ACCESS AND  
MANAGEMENT ACT REVISIONS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kraig Powell**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions of the Government Records Access and Management Act that relate to disclosure of gross compensation.

**Highlighted Provisions:**

This bill:

- requires a governmental entity to provide gross compensation information for all elected or appointed employees by name;
- requires a governmental entity to provide gross compensation information for all other employees, provided that the disclosure identifies each employee by job title, rather than by name; and
- provides that an employee's name, excepting elected or appointed employees, is presumed to have a classification of "protected" if it is sought to be disclosed in correlation with the employee's gross compensation.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None



## Utah Code Sections Affected:

## AMENDS:

**63G-2-301**, as last amended by Laws of Utah 2009, Chapter 344

**63G-2-305**, as last amended by Laws of Utah 2009, Chapters 64 and 121

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

Section 1. Section **63G-2-301** is amended to read:

**63G-2-301. Records that must be disclosed.**

(1) As used in this section:

(a) "Business address" means a single address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(b) "Business email address" means a single email address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(c) "Business telephone number" means a single telephone number of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(2) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63G-2-201(3)(b) and (6)(a):

(a) laws;

(b) the name, gender, ~~[gross compensation]~~ job title, job description, business address, business email address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of a current or former employee or officer of the governmental entity, excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) the gross compensation of:

(i) an employee or officer that is elected or appointed; and

(ii) employees that are not elected or appointed, provided that the disclosure is provided in a manner that identifies an employee by job title and does not identify, or associate the gross compensation with, an individual employee by name.

57           ~~[(e)]~~ (d) final opinions, including concurring and dissenting opinions, and orders that  
58 are made by a governmental entity in an administrative, adjudicative, or judicial proceeding  
59 except that if the proceedings were properly closed to the public, the opinion and order may be  
60 withheld to the extent that they contain information that is private, controlled, or protected;

61           ~~[(d)]~~ (e) final interpretations of statutes or rules by a governmental entity unless  
62 classified as protected as provided in Subsections 63G-2-305(16), (17), and (18);

63           ~~[(e)]~~ (f) information contained in or compiled from a transcript, minutes, or report of  
64 the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4,  
65 Open and Public Meetings Act, including the records of all votes of each member of the  
66 governmental entity;

67           ~~[(f)]~~ (g) judicial records unless a court orders the records to be restricted under the  
68 rules of civil or criminal procedure or unless the records are private under this chapter;

69           ~~[(g)]~~ (h) unless otherwise classified as private under Section 63G-2-303, records or  
70 parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors,  
71 zoning commissions, the Division of Forestry, Fire, and State Lands, the School and  
72 Institutional Trust Lands Administration, the Division of Oil, Gas, and Mining, the Division of  
73 Water Rights, or other governmental entities that give public notice of:

74           (i) titles or encumbrances to real property;

75           (ii) restrictions on the use of real property;

76           (iii) the capacity of persons to take or convey title to real property; or

77           (iv) tax status for real and personal property;

78           ~~[(h)]~~ (i) records of the Department of Commerce that evidence incorporations, mergers,  
79 name changes, and uniform commercial code filings;

80           ~~[(i)]~~ (j) data on individuals that would otherwise be private under this chapter if the  
81 individual who is the subject of the record has given the governmental entity written  
82 permission to make the records available to the public;

83           ~~[(j)]~~ (k) documentation of the compensation that a governmental entity pays to a  
84 contractor or private provider;

85           ~~[(k)]~~ (l) summary data; and

86           ~~[(l)]~~ (m) voter registration records, including an individual's voting history, except for  
87 those parts of the record that are classified as private in Subsection 63G-2-302(1)(i).

(3) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b), Section 63G-2-302, 63G-2-304, or 63G-2-305:

(a) administrative staff manuals, instructions to staff, and statements of policy;

(b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

(c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;

(d) contracts entered into by a governmental entity;

(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63G-2-305(35);

(g) chronological logs and initial contact reports;

(h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(i) empirical data contained in drafts if:

(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

(j) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

(k) drafts that have never been finalized but were relied upon by the governmental

entity in carrying out action or policy;

(l) original data in a computer program if the governmental entity chooses not to disclose the program;

(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

(p) records maintained by the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that evidence mineral production on government lands;

(q) final audit reports;

(r) occupational and professional licenses;

(s) business licenses; and

(t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

(4) The list of public records in this section is not exhaustive and should not be used to limit access to records.

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

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

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

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

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

(a) disclosure of the information could reasonably be expected to result in unfair

competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

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

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

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

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

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

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

(a) a request for bids;

(b) a request for proposals;

(c) a grant; or

(d) other similar document;

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

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

(b) the information has already been disclosed to persons not employed by or under a

duty of confidentiality to the entity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



243 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of  
244 legislative action or policy may not be classified as protected under this section; and  
245 (b) (i) an internal communication that is part of the deliberative process in connection  
246 with the preparation of legislation between:  
247 (A) members of a legislative body;  
248 (B) a member of a legislative body and a member of the legislative body's staff; or  
249 (C) members of a legislative body's staff; and  
250 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of  
251 legislative action or policy may not be classified as protected under this section;  
252 (20) (a) records in the custody or control of the Office of Legislative Research and  
253 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
254 legislation or contemplated course of action before the legislator has elected to support the  
255 legislation or course of action, or made the legislation or course of action public; and  
256 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
257 Office of Legislative Research and General Counsel is a public document unless a legislator  
258 asks that the records requesting the legislation be maintained as protected records until such  
259 time as the legislator elects to make the legislation or course of action public;  
260 (21) research requests from legislators to the Office of Legislative Research and  
261 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
262 in response to these requests;  
263 (22) drafts, unless otherwise classified as public;  
264 (23) records concerning a governmental entity's strategy about collective bargaining or  
265 pending litigation;  
266 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
267 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the  
268 Uninsured Employers' Fund, or similar divisions in other governmental entities;  
269 (25) records, other than personnel evaluations, that contain a personal recommendation  
270 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
271 personal privacy, or disclosure is not in the public interest;  
272 (26) records that reveal the location of historic, prehistoric, paleontological, or  
273 biological resources that if known would jeopardize the security of those resources or of

valuable historic, scientific, educational, or cultural information;

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

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

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

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

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

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

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

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

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the

person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

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

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

(a) the donor requests anonymity in writing;

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

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

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

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

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

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

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

(II) a sponsor of sponsored research;

336 (iii) unpublished manuscripts;  
 337 (iv) creative works in process;  
 338 (v) scholarly correspondence; and  
 339 (vi) confidential information contained in research proposals;  
 340 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public  
 341 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and  
 342 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;  
 343 (41) (a) records in the custody or control of the Office of Legislative Auditor General  
 344 that would reveal the name of a particular legislator who requests a legislative audit prior to the  
 345 date that audit is completed and made public; and  
 346 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the  
 347 Office of the Legislative Auditor General is a public document unless the legislator asks that  
 348 the records in the custody or control of the Office of Legislative Auditor General that would  
 349 reveal the name of a particular legislator who requests a legislative audit be maintained as  
 350 protected records until the audit is completed and made public;  
 351 (42) records that provide detail as to the location of an explosive, including a map or  
 352 other document that indicates the location of:  
 353 (a) a production facility; or  
 354 (b) a magazine;  
 355 (43) information:  
 356 (a) contained in the statewide database of the Division of Aging and Adult Services  
 357 created by Section 62A-3-311.1; or  
 358 (b) received or maintained in relation to the Identity Theft Reporting Information  
 359 System (IRIS) established under Section 67-5-22;  
 360 (44) information contained in the Management Information System and Licensing  
 361 Information System described in Title 62A, Chapter 4a, Child and Family Services;  
 362 (45) information regarding National Guard operations or activities in support of the  
 363 National Guard's federal mission;  
 364 (46) records provided by any pawn or secondhand business to a law enforcement  
 365 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and  
 366 Secondhand Merchandise Transaction Information Act;

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

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

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

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

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

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

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

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

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

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

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

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

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

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

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

(b) conducted using animals;

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

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

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

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

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

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

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

[and]

(58) information requested by and provided to the Utah State 911 Committee under Section 53-10-602[-]; and

(59) an employee's name, if disclosure of the name is associated with disclosure of the employee's gross compensation as provided under Subsection 63G-2-301(2)(c)(ii).

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**Fiscal Note****H.B. 266 1st Sub. (Buff) - Government Records Access and Management Act  
Revisions**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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.

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