

Representative Christopher N. Herrod proposes the following substitute bill:

**GOVERNMENT RECORDS ACCESS AND
MANAGEMENT ACT AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christopher N. Herrod

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ requires a record to be produced in an electronic format upon request if the governmental entity currently maintains the record in an electronic format, subject to certain restrictions;
- ▶ modifies and clarifies language dealing with requirements for initial responses to records requests; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



26 **63G-2-204**, as renumbered and amended by Laws of Utah 2008, Chapter 382



27
28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **63G-2-201** is amended to read:

30 **63G-2-201. Right to inspect records and receive copies of records.**

31 (1) Every person has the right to inspect a public record free of charge, and the right to
32 take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and
33 63G-2-204.

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

35 (3) The following records are not public:

36 (a) a record that is private, controlled, or protected under Sections 63G-2-302,
37 63G-2-303, 63G-2-304, and 63G-2-305; and

38 (b) a record to which access is restricted pursuant to court rule, another state statute,
39 federal statute, or federal regulation, including records for which access is governed or
40 restricted as a condition of participation in a state or federal program or for receiving state or
41 federal funds.

42 (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or
43 63G-2-305 may be classified private, controlled, or protected.

44 (5) (a) A governmental entity may not disclose a record that is private, controlled, or
45 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section
46 63G-2-202, 63G-2-206, or 63G-2-303.

47 (b) A governmental entity may disclose a record that is private under Subsection
48 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in
49 Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee,
50 determines that:

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

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

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

55 (i) the head of the governmental entity, or a designee, determines that the disclosure:

56 (A) is mutually beneficial to:

57 (I) the subject of the record;

58 (II) the governmental entity; and

59 (III) the public; and

60 (B) serves a public purpose related to:

61 (I) public safety; or

62 (II) consumer protection; and

63 (ii) the person who receives the record from the governmental entity agrees not to use
64 or allow the use of the record for advertising or solicitation purposes.

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

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

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

73 (a) the person requesting the record has a right to inspect it;

74 (b) the person identifies the record with reasonable specificity; and

75 (c) the person pays the lawful fees.

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

77 (i) create a record;

78 (ii) compile, format, manipulate, package, summarize, or tailor information;

79 (iii) provide a record in a particular format, medium, or program not currently
80 maintained by the governmental entity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

109 (10) (a) A governmental entity that owns an intellectual property right and that offers
110 the intellectual property right for sale or license may control by ordinance or policy the
111 duplication and distribution of the material based on terms the governmental entity considers to
112 be in the public interest.

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

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

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

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

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

125 (c) the electronic copy of the record:

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

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

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

130 **63G-2-204. Requests -- Time limit for response and extraordinary circumstances.**

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

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

134 and

135 (b) a description of the record requested that identifies the record with reasonable
136 specificity.

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

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

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

145 (i) deny the records request; and

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

148 (d) A governmental entity may make rules in accordance with Title 63G, Chapter 3,
149 Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall

150 be directed.

151 (3) (a) ~~[As]~~ After receiving a request for a record, a governmental entity shall, soon as
152 reasonably possible, but no later than 10 business days after receiving a written request, or five
153 business days after receiving a written request if the requester demonstrates that expedited
154 response to the record request benefits the public rather than the person~~[-, the governmental~~
155 ~~entity shall respond to the request by]:~~

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

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

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

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

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

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

167 (A) a description of the circumstances that constitute the extraordinary circumstances;
168 and

169 ~~[(ii) specify]~~ (B) the date when the records will be available, consistent with the
170 requirements of Subsection (5).

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

174 (4) The following circumstances constitute "extraordinary circumstances" that allow a
175 governmental entity to delay approval or denial by an additional period of time as specified in
176 Subsection (5) if the governmental entity determines that due to the extraordinary
177 circumstances it cannot respond within the time limits provided in Subsection (3):

178 (a) another governmental entity is using the record, in which case the originating
179 governmental entity shall promptly request that the governmental entity currently in possession
180 return the record;

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

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

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

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

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

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

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

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

197 (5) If one of the extraordinary circumstances listed in Subsection (4) precludes
198 approval or denial within the time specified in Subsection (3), the following time limits apply
199 to the extraordinary circumstances:

200 (a) for claims under Subsection (4)(a), the governmental entity currently in possession
201 of the record shall return the record to the originating entity within five business days of the
202 request for the return unless returning the record would impair the holder's work;

203 (b) for claims under Subsection (4)(b), the originating governmental entity shall notify
204 the requester when the record is available for inspection and copying;

205 (c) for claims under Subsections (4)(c), (d), and (e), the governmental entity shall:

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

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

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

211 (iv) for any person that does not establish a right to an expedited response as

212 authorized by Subsection (3)(a), a governmental entity may choose to:

213 (A) require the person to provide for copying of the records as provided in Subsection
214 63G-2-201(9); or

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

217 (d) for claims under Subsection (4)(f), the governmental entity shall either approve or
218 deny the request within five business days after the response time specified for the original
219 request has expired;

220 (e) for claims under Subsection (4)(g), the governmental entity shall fulfill the request
221 within 15 business days from the date of the original request; or

222 (f) for claims under Subsection (4)(h), the governmental entity shall complete its
223 programming and disclose the requested records as soon as reasonably possible.

224 (6) (a) If a request for access is submitted to an office of a governmental entity other
225 than that specified by rule in accordance with Subsection (2), the office shall promptly forward
226 the request to the appropriate office.

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

229 (7) If the governmental entity fails to provide the requested records or issue a denial
230 within the specified time period, that failure is considered the equivalent of a determination
231 denying access to the record.