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**GOVERNMENT RECORDS ACCESS AND  
MANAGEMENT ACT AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Christopher N. Herrod**

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

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**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 language dealing with requirements for initial responses to records requests;
- ▶ reduces the deadline for a governmental entity to respond that it does not maintain records requested;
- ▶ reduces the deadline for a governmental entity to provide notice that it is requesting additional time to respond to a request due to extraordinary circumstances; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 AMENDS:

29 **63G-2-201**, as renumbered and amended by Laws of Utah 2008, Chapter 382

30 **63G-2-204**, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

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

34 **63G-2-201. Right to inspect records and receive copies of records.**

35 (1) Every person has the right to inspect a public record free of charge, and the right to  
36 take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and  
37 63G-2-204.

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

39 (3) The following records are not public:

40 (a) a record that is private, controlled, or protected under Sections 63G-2-302,  
41 63G-2-303, 63G-2-304, and 63G-2-305; and

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

46 (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or  
47 63G-2-305 may be classified private, controlled, or protected.

48 (5) (a) A governmental entity may not disclose a record that is private, controlled, or  
49 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section  
50 63G-2-202, 63G-2-206, or 63G-2-303.

51 (b) A governmental entity may disclose a record that is private under Subsection  
52 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in  
53 Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee,  
54 determines that:

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

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

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

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

60 (A) is mutually beneficial to:

61 (I) the subject of the record;

62 (II) the governmental entity; and

63 (III) the public; and

64 (B) serves a public purpose related to:

65 (I) public safety; or

66 (II) consumer protection; and

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

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

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

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

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

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

79 (c) the person pays the lawful fees.

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

81 (i) create a record;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

120 (11) A governmental entity may not use the physical form, electronic or otherwise, in

121 which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and  
122 receive a copy of a record under this chapter.

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

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

127 (b) the governmental entity currently maintains the record in an electronic format; and

128 (c) the electronic copy of the record:

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

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

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

133 **63G-2-204. Requests -- Time limit for response and extraordinary circumstances.**

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

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

137 and

138 (b) a description of the record requested that identifies the record with reasonable  
139 specificity.

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

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

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

148 (i) deny the records request; and

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

151 (d) A governmental entity may make rules in accordance with Title 63G, Chapter 3,

152 Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall  
153 be directed.

154 (3) (a) After receiving a request for a record, a governmental entity shall:

155 ~~[(3)(a) As]~~ (i) as soon as reasonably possible, but no later than 10 business days after  
156 receiving [a] the written request, or five business days after receiving [a] the written request if  
157 the requester demonstrates that an expedited response to the record request benefits the public  
158 rather than the person[, the governmental entity shall respond to the request by]:

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

160 or

161 ~~[(ii) denying the request;]~~

162 (B) deny the request in accordance with the procedures and requirements of Section  
163 63G-2-205; or

164 (ii) as soon as reasonably possible, but not later than five business days after receiving  
165 the written request:

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

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

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

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

174 (I) a description of the circumstances that constitute the extraordinary circumstances;

175 and

176 ~~[(ii) specify]~~ (II) the date when the records will be available, consistent with the  
177 requirements of Subsection (5).

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

181 (4) The following circumstances constitute "extraordinary circumstances" that allow a  
182 governmental entity to delay approval or denial by an additional period of time as specified in

183 Subsection (5) if the governmental entity determines that due to the extraordinary  
184 circumstances it cannot respond within the time limits provided in Subsection (3):

185 (a) another governmental entity is using the record, in which case the originating  
186 governmental entity shall promptly request that the governmental entity currently in possession  
187 return the record;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

220 (A) require the person to provide for copying of the records as provided in Subsection  
221 63G-2-201(9); or

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

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

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

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

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

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

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

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**Legislative Review Note**  
**as of 1-29-10 1:00 PM**

**Office of Legislative Research and General Counsel**



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**H.B. 278 - Government Records Access and Management Act Amendments**

**Fiscal Note**

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**

Small local governments may incur additional costs providing electronic records. These costs may be passed on through fees charged to those requesting information in electronic formats.

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