

1                   **GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT**

2                                   **AMENDMENTS**

3   2012 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Curtis S. Bramble**

6                                   House Sponsor: \_\_\_\_\_

---

7

8                   **LONG TITLE**

9                   **General Description:**

10                   This bill amends provisions of the Public Records Management Act and the  
11                   Government Records Access and Management Act by providing for the training of  
12                   records officers, creating the position of a government records ombudsman, and  
13                   amending provisions relating to the disclosure or protection of records.

14                   **Highlighted Provisions:**

15                   This bill:

- 16                   ▶ defines terms;
- 17                   ▶ requires the Division of Archives and Records Service (division) to provide an  
18                   online training course that is required to be successfully completed by records  
19                   officers on an annual basis;
- 20                   ▶ grants rulemaking authority to the division;
- 21                   ▶ creates the position, and describes the duties of, the government records  
22                   ombudsman;
- 23                   ▶ provides that a record shall be disclosed when the public interest in disclosure is  
24                   equal to or greater than the interests in nondisclosure;
- 25                   ▶ amends protected records provisions relating to the attorney client privilege,  
26                   attorney work product, and records prepared for or in anticipation of litigation or  
27                   other proceedings;



- 28           ▶ requires a person who files an appeal with the records committee to serve a copy of
- 29 the appeal on the government entity to which the appeal relates;
- 30           ▶ establishes evidentiary standards for release of certain enforcement and litigation
- 31 records;
- 32           ▶ creates a good faith defense to criminal provisions relating to the release or use of
- 33 government records; and
- 34           ▶ makes technical changes.

**35 Money Appropriated in this Bill:**

36           None

**37 Other Special Clauses:**

38           None

**39 Utah Code Sections Affected:**

40 **AMENDS:**

- 41           **63C-4-102**, as last amended by Laws of Utah 2011, Chapter 252
- 42           **63G-2-103**, as last amended by Laws of Utah 2011, Chapter 46
- 43           **63G-2-201**, as last amended by Laws of Utah 2010, Chapter 380
- 44           **63G-2-202**, as last amended by Laws of Utah 2011, Chapter 343
- 45           **63G-2-206**, as last amended by Laws of Utah 2011, Chapter 18
- 46           **63G-2-301**, as last amended by Laws of Utah 2011, Chapters 45 and 46
- 47           **63G-2-305**, as last amended by Laws of Utah 2011, Chapters 18, 46, 55, 80, 151, and
- 48 161
- 49           **63G-2-309**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 50           **63G-2-401**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 51           **63G-2-403**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 52           **63G-2-404**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 53           **63G-2-405**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 54           **63G-2-801**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 55           **78A-4-106**, as renumbered and amended by Laws of Utah 2008, Chapter 3

56 **ENACTS:**

- 57           **63A-12-110**, Utah Code Annotated 1953
- 58           **63A-12-111**, Utah Code Annotated 1953

59           **63G-2-108**, Utah Code Annotated 1953  
60           **63G-2-406**, Utah Code Annotated 1953



61  
62 *Be it enacted by the Legislature of the state of Utah:*

63           Section 1. Section **63A-12-110** is enacted to read:

64           **63A-12-110. Online training course.**

65           (1) As used in this section, "records officer" is as defined in Section 63G-2-103.

66           (2) The division shall:

67           (a) develop an online training course for records officers of all governmental entities  
68 and political subdivisions;

69           (b) make the online training course available on or before January 1, 2013;

70           (c) on an annual basis, provide certification to a records officer after the records officer  
71 successfully completes the online training course; and

72           (d) post a list on its website of all records officers, including for each:

73           (i) the name of the records officer;

74           (ii) the name of the governmental entity or political subdivision to which the records  
75 officer provides services as a records officer;

76           (iii) contact information for the records officer;

77           (iv) the most recent date on which the records officer completed the online training  
78 course; and

79           (v) the date on which the records officer's certification expires.

80           (3) The online training course described in this section shall train a records officer  
81 regarding the provisions of:

82           (a) Title 63G, Chapter 2, Government Records Access and Management Act;

83           (b) rules made under Title 63G, Chapter 2, Government Records Access and  
84 Management Act; and

85           (c) other legal and policy matters relating to responding to a public records request.

86           (4) The division:

87           (a) shall develop the online training course in consultation with the attorney general's  
88 office; and

89           (b) may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative

90 Rulemaking Act.

91 Section 2. Section **63A-12-111** is enacted to read:

92 **63A-12-111. Government records ombudsman.**

93 (1) (a) The director of the division shall appoint a government records ombudsman.

94 (b) The government records ombudsman may not be a member of the records  
95 committee.

96 (2) The government records ombudsman shall:

97 (a) be familiar with the provisions of Title 63G, Chapter 2, Government Records

98 Access and Management Act;

99 (b) serve as a resource for a person who is making or responding to a records request or  
100 filing an appeal relating to a records request;

101 (c) upon request, attempt to mediate disputes between requestors and responders; and

102 (d) on an annual basis, report to the Government Operations and Political Subdivisions  
103 Interim Committee on the work performed by the government records ombudsman during the  
104 previous year.

105 (3) The government records ombudsman may not testify, or be compelled to testify,  
106 before the records committee, another administrative body, or a court regarding a matter that  
107 the government records ombudsman provided services in relation to under this section.

108 Section 3. Section **63C-4-102** is amended to read:

109 **63C-4-102. Duties.**

110 (1) The Constitutional Defense Council is a council to assist the governor and the  
111 Legislature on the following types of issues:

112 (a) the constitutionality of federal mandates;

113 (b) when making recommendations to challenge the federal mandates and regulations  
114 described in Subsections (1)(e)(i) through (v), the rationale for and effectiveness of those  
115 federal mandates or regulations;

116 (c) legal and policy issues surrounding state and local government rights under R.S.  
117 2477;

118 (d) legal issues relating to the rights of the School and Institutional Trust Lands  
119 Administration and its beneficiaries; and

120 (e) the advisability, feasibility, estimated cost, and likelihood of success of challenging:

- 121 (i) federal court rulings that:
- 122 (A) hinder the management of the state's prison system and place undue financial
- 123 hardship on the state's taxpayers;
- 124 (B) impact a power or a right reserved to the state or its citizens by the United States
- 125 Constitution, Amendment IX or X; or
- 126 (C) expand or grant a power to the United States government beyond the limited,
- 127 enumerated powers granted by the United States Constitution;
- 128 (ii) federal laws or regulations that reduce or negate water rights or the rights of owners
- 129 of private property, or the rights and interest of state and local governments, including
- 130 sovereignty interests and the power to provide for the health, safety, and welfare, and promote
- 131 the prosperity of their inhabitants;
- 132 (iii) conflicting federal regulations or policies in land management on federal land;
- 133 (iv) federal intervention that would damage the state's mining, timber, and ranching
- 134 industries;
- 135 (v) the authority of the Environmental Protection Agency and Congress to mandate
- 136 local air quality standards and penalties; and
- 137 (vi) other issues that are relevant to this Subsection (1).
- 138 (2) The council shall:
- 139 (a) provide advice to the governor, state planning coordinator, and the public lands
- 140 policy coordinator concerning coordination of:
- 141 (i) state and local government rights under R.S. 2477; and
- 142 (ii) other public lands issues;
- 143 (b) approve a plan for R.S. 2477 rights developed in accordance with Section
- 144 63C-4-104; and
- 145 (c) review, at least quarterly:
- 146 (i) financial statements concerning implementation of the plan for R.S. 2477 rights;
- 147 and
- 148 (ii) financial and other reports from the Public Lands Policy Coordinating Office
- 149 concerning its activities.
- 150 (3) The council chair may require the attorney general or a designee to provide
- 151 testimony on potential legal actions that would enhance the state's sovereignty or authority on

152 issues affecting Utah and the well-being of its citizens.

153 (4) The council chair may direct the attorney general to initiate and prosecute any  
154 action that the council determines will further its purposes, including an action described in  
155 Section 67-5-29.

156 (5) (a) Subject to the provisions of this section, the council may select and employ  
157 attorneys to implement the purposes and duties of the council.

158 (b) The council chair may, in consultation with the council, direct any council attorney  
159 in any manner considered appropriate by the attorney general to best serve the purposes of the  
160 council.

161 (c) The attorney general shall negotiate a contract for services with any attorney  
162 selected and approved for employment under this section.

163 (6) The council chair may, only with the concurrence of the council, review and  
164 approve all claims for payments for:

165 (a) legal services that are submitted to the council;

166 (b) an action filed in accordance with Section 67-5-29; and

167 (c) costs related to a constitutional defense plan approved in accordance with Section  
168 63C-4-104 that are submitted by:

169 (i) the Public Lands Policy Coordinating Office;

170 (ii) the School and Institutional Trust Lands Administration; or

171 (iii) the Office of the Attorney General.

172 (7) Within five business days' notice, the council chair may, with the concurrence of  
173 the council, order the attorney general or an attorney employed by the council to cease work to  
174 be charged to the fund.

175 (8) (a) At least 20 calendar days before the state submits comments on the draft  
176 environmental impact statement or environmental assessment for a proposed land management  
177 plan of any federal land management agency, the governor shall make those documents  
178 available to:

179 (i) members of the council; and

180 (ii) any county executive, county council member, or county commissioner of a county  
181 that is covered by the management plan and that has established formal cooperating agency  
182 status with the relevant federal land management agency regarding the proposed plan.

183 (b) (i) Council members or local government officials receiving the documents may  
184 make recommendations to the governor or the governor's designee concerning changes to the  
185 documents before they are submitted to the federal land management agency.

186 (ii) Council members or local government officials shall submit recommendations to  
187 the governor or the governor's designee no later than 10 calendar days after receiving the  
188 documents under Subsection (8)(a).

189 (c) Documents transmitted or received under this Subsection (8) are drafts and are  
190 protected records pursuant to Subsection 63G-2-305[~~(22)~~](21).

191 (9) The council shall submit a report on December 1 of each year by electronic mail  
192 that summarizes the council's activities to each legislator.

193 Section 4. Section **63G-2-103** is amended to read:

194 **63G-2-103. Definitions.**

195 As used in this chapter:

196 (1) "Audit" means:

197 (a) a systematic examination of financial, management, program, and related records  
198 for the purpose of determining the fair presentation of financial statements, adequacy of  
199 internal controls, or compliance with laws and regulations; or

200 (b) a systematic examination of program procedures and operations for the purpose of  
201 determining their effectiveness, economy, efficiency, and compliance with statutes and  
202 regulations.

203 (2) "Chronological logs" mean the regular and customary summary records of law  
204 enforcement agencies and other public safety agencies that show:

205 (a) the time and general nature of police, fire, and paramedic calls made to the agency;  
206 and

207 (b) any arrests or jail bookings made by the agency.

208 (3) "Classification," "classify," and their derivative forms mean determining whether a  
209 record series, record, or information within a record is public, private, controlled, protected, or  
210 exempt from disclosure under Subsection 63G-2-201(3)(b).

211 (4) (a) "Computer program" means:

212 (i) a series of instructions or statements that permit the functioning of a computer  
213 system in a manner designed to provide storage, retrieval, and manipulation of data from the

214 computer system; and

215 (ii) any associated documentation and source material that explain how to operate the  
216 computer program.

217 (b) "Computer program" does not mean:

218 (i) the original data, including numbers, text, voice, graphics, and images;

219 (ii) analysis, compilation, and other manipulated forms of the original data produced by  
220 use of the program; or

221 (iii) the mathematical or statistical formulas, excluding the underlying mathematical  
222 algorithms contained in the program, that would be used if the manipulated forms of the  
223 original data were to be produced manually.

224 (5) (a) "Contractor" means:

225 (i) any person who contracts with a governmental entity to provide goods or services  
226 directly to a governmental entity; or

227 (ii) any private, nonprofit organization that receives funds from a governmental entity.

228 (b) "Contractor" does not mean a private provider.

229 (6) "Controlled record" means a record containing data on individuals that is controlled  
230 as provided by Section 63G-2-304.

231 (7) "Designation," "designate," and their derivative forms mean indicating, based on a  
232 governmental entity's familiarity with a record series or based on a governmental entity's  
233 review of a reasonable sample of a record series, the primary classification that a majority of  
234 records in a record series would be given if classified and the classification that other records  
235 typically present in the record series would be given if classified.

236 (8) "Elected official" means each person elected to a state office, county office,  
237 municipal office, school board or school district office, local district office, or special service  
238 district office, but does not include judges.

239 (9) "Explosive" means a chemical compound, device, or mixture:

240 (a) commonly used or intended for the purpose of producing an explosion; and

241 (b) that contains oxidizing or combustive units or other ingredients in proportions,  
242 quantities, or packing so that:

243 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the  
244 compound or mixture may cause a sudden generation of highly heated gases; and



- 245 (ii) the resultant gaseous pressures are capable of:  
246 (A) producing destructive effects on contiguous objects; or  
247 (B) causing death or serious bodily injury.
- 248 (10) "Government audit agency" means any governmental entity that conducts an audit.
- 249 (11) (a) "Governmental entity" means:  
250 (i) executive department agencies of the state, the offices of the governor, lieutenant  
251 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,  
252 the Board of Examiners, the National Guard, the Career Service Review Board, the State Board  
253 of Education, the State Board of Regents, and the State Archives;  
254 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal  
255 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative  
256 committees, except any political party, group, caucus, or rules or sifting committee of the  
257 Legislature;  
258 (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar  
259 administrative units in the judicial branch;  
260 (iv) any state-funded institution of higher education or public education; or  
261 (v) any political subdivision of the state, but, if a political subdivision has adopted an  
262 ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this  
263 chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or  
264 as specified in any other section of this chapter that specifically refers to political subdivisions.
- 265 (b) "Governmental entity" also means every office, agency, board, bureau, committee,  
266 department, advisory board, or commission of an entity listed in Subsection (11)(a) that is  
267 funded or established by the government to carry out the public's business.
- 268 (c) "Governmental entity" does not include the Utah Educational Savings Plan created  
269 in Section 53B-8a-103.
- 270 (12) "Gross compensation" means every form of remuneration payable for a given  
271 period to an individual for services provided including salaries, commissions, vacation pay,  
272 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any  
273 similar benefit received from the individual's employer.
- 274 (13) "Individual" means a human being.
- 275 (14) (a) "Initial contact report" means an initial written or recorded report, however

276 titled, prepared by peace officers engaged in public patrol or response duties describing official  
277 actions initially taken in response to either a public complaint about or the discovery of an  
278 apparent violation of law, which report may describe:

- 279 (i) the date, time, location, and nature of the complaint, the incident, or offense;
- 280 (ii) names of victims;
- 281 (iii) the nature or general scope of the agency's initial actions taken in response to the  
282 incident;
- 283 (iv) the general nature of any injuries or estimate of damages sustained in the incident;
- 284 (v) the name, address, and other identifying information about any person arrested or  
285 charged in connection with the incident; or
- 286 (vi) the identity of the public safety personnel, except undercover personnel, or  
287 prosecuting attorney involved in responding to the initial incident.

288 (b) Initial contact reports do not include follow-up or investigative reports prepared  
289 after the initial contact report. However, if the information specified in Subsection (14)(a)  
290 appears in follow-up or investigative reports, it may only be treated confidentially if it is  
291 private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

292 (15) "Legislative body" means the Legislature.

293 (16) "Notice of compliance" means a statement confirming that a governmental entity  
294 has complied with a records committee order.

295 (17) "Person" means:

- 296 (a) an individual;
- 297 (b) a nonprofit or profit corporation;
- 298 (c) a partnership;
- 299 (d) a sole proprietorship;
- 300 (e) other type of business organization; or
- 301 (f) any combination acting in concert with one another.

302 (18) "Private provider" means any person who contracts with a governmental entity to  
303 provide services directly to the public.

304 (19) "Private record" means a record containing data on individuals that is private as  
305 provided by Section 63G-2-302.

306 (20) "Protected record" means a record that is classified protected as provided by

307 Section 63G-2-305.

308 (21) "Public record" means a record that is not private, controlled, or protected and that  
309 is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

310 (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film,  
311 card, tape, recording, electronic data, or other documentary material regardless of physical form  
312 or characteristics:

313 (i) that is prepared, owned, received, or retained by a governmental entity or political  
314 subdivision; and

315 (ii) where all of the information in the original is reproducible by photocopy or other  
316 mechanical or electronic means.

317 (b) "Record" does not mean:

318 (i) a personal note or personal communication prepared or received by an employee or  
319 officer of a governmental entity [~~in the employee's or officer's private capacity;~~];

320 (A) in a capacity other than the employee's or officer's governmental capacity; or

321 (B) that is unrelated to the conduct of the public's business;

322 (ii) a temporary draft or similar material prepared for the originator's personal use or  
323 prepared by the originator for the personal use of an individual for whom the originator is  
324 working;

325 (iii) material that is legally owned by an individual in the individual's private capacity;

326 (iv) material to which access is limited by the laws of copyright or patent unless the  
327 copyright or patent is owned by a governmental entity or political subdivision;

328 (v) proprietary software;

329 (vi) junk mail or a commercial publication received by a governmental entity or an  
330 official or employee of a governmental entity;

331 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections  
332 of a library open to the public;

333 (viii) material that is cataloged, indexed, or inventoried and contained in the collections  
334 of a library open to the public, regardless of physical form or characteristics of the material;

335 (ix) a daily calendar or other personal note prepared by the originator for the  
336 originator's personal use or for the personal use of an individual for whom the originator is  
337 working;

338 (x) a computer program that is developed or purchased by or for any governmental  
339 entity for its own use;

340 (xi) a note or internal memorandum prepared as part of the deliberative process by:

341 (A) a member of the judiciary;

342 (B) an administrative law judge;

343 (C) a member of the Board of Pardons and Parole; or

344 (D) a member of any other body charged by law with performing a quasi-judicial  
345 function;

346 (xii) a telephone number or similar code used to access a mobile communication  
347 device that is used by an employee or officer of a governmental entity, provided that the  
348 employee or officer of the governmental entity has designated at least one business telephone  
349 number that is a public record as provided in Section 63G-2-301;

350 (xiii) information provided by the Public Employees' Benefit and Insurance Program,  
351 created in Section 49-20-103, to a county to enable the county to calculate the amount to be  
352 paid to a health care provider under Subsection 17-50-319(2)(e)(ii); or

353 (xiv) information that an owner of unimproved property provides to a local entity as  
354 provided in Section 11-42-205.

355 (23) "Record series" means a group of records that may be treated as a unit for  
356 purposes of designation, description, management, or disposition.

357 (24) "Records committee" means the State Records Committee created in Section  
358 63G-2-501.

359 (25) "Records officer" means the individual appointed by the chief administrative  
360 officer of each governmental entity, or the political subdivision to work with state archives in  
361 the care, maintenance, scheduling, designation, classification, disposal, and preservation of  
362 records.

363 (26) "Schedule," "scheduling," and their derivative forms mean the process of  
364 specifying the length of time each record series should be retained by a governmental entity for  
365 administrative, legal, fiscal, or historical purposes and when each record series should be  
366 transferred to the state archives or destroyed.

367 (27) "Sponsored research" means research, training, and other sponsored activities as  
368 defined by the federal Executive Office of the President, Office of Management and Budget:

- 369 (a) conducted:
- 370 (i) by an institution within the state system of higher education defined in Section
- 371 53B-1-102; and
- 372 (ii) through an office responsible for sponsored projects or programs; and
- 373 (b) funded or otherwise supported by an external:
- 374 (i) person that is not created or controlled by the institution within the state system of
- 375 higher education; or
- 376 (ii) federal, state, or local governmental entity.

377 (28) "State archives" means the Division of Archives and Records Service created in  
 378 Section 63A-12-101.

379 (29) "State archivist" means the director of the state archives.

380 (30) "Summary data" means statistical records and compilations that contain data  
 381 derived from private, controlled, or protected information but that do not disclose private,  
 382 controlled, or protected information.

383 Section 5. Section **63G-2-108** is enacted to read:

384 **63G-2-108. Certification of records officer.**

385 Each records officer of a governmental entity or political subdivision shall, on an  
 386 annual basis, successfully complete online training and obtain certification from state archives  
 387 in accordance with Section 63A-12-110.

388 Section 6. Section **63G-2-201** is amended to read:

389 **63G-2-201. Right to inspect records and receive copies of records.**

390 (1) Every person has the right to inspect a public record free of charge, and the right to  
 391 take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and  
 392 63G-2-204.

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

394 (3) The following records are not public:

395 (a) a record that is private, controlled, or protected under Sections 63G-2-302,  
 396 63G-2-303, 63G-2-304, and 63G-2-305; and

397 (b) a record to which access is restricted pursuant to court rule, another state statute,  
 398 federal statute, or federal regulation, including records for which access is governed or  
 399 restricted as a condition of participation in a state or federal program or for receiving state or

400 federal funds.

401 (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or  
402 63G-2-305 may be classified private, controlled, or protected.

403 (5) (a) A governmental entity may not disclose a record that is private, controlled, or  
404 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section  
405 63G-2-202, 63G-2-206, or 63G-2-303.

406 (b) A governmental entity may disclose a record that is private under Subsection  
407 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in  
408 Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee,  
409 determines that:

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

411 (ii) the interests favoring access [~~outweighs~~] are greater than or equal to the interest  
412 favoring restriction of access.

413 (c) In addition to the disclosure under Subsection (5)(b), a governmental entity may  
414 disclose a record that is protected under Subsection 63G-2-305[~~(51)~~](50) if:

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

416 (A) is mutually beneficial to:

417 (I) the subject of the record;

418 (II) the governmental entity; and

419 (III) the public; and

420 (B) serves a public purpose related to:

421 (I) public safety; or

422 (II) consumer protection; and

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

425 (6) (a) The disclosure of a record to which access is governed or limited pursuant to  
426 court rule, another state statute, federal statute, or federal regulation, including a record for  
427 which access is governed or limited as a condition of participation in a state or federal program  
428 or for receiving state or federal funds, is governed by the specific provisions of that statute,  
429 rule, or regulation.

430 (b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter

431 is not inconsistent with the statute, rule, or regulation.

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

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

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

435 (c) the person pays the lawful fees.

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

437 (i) create a record;

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

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

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

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

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

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

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

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

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

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

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

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

461 (ii) the governmental entity provides reasonable safeguards to protect the public from

462 the potential for loss of a public record.

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

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

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

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

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

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

479 (12) Subject to the requirements of Subsection (8), a governmental entity shall provide  
480 access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

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

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

484 (c) the electronic copy of the record:

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

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

488 Section 7. Section **63G-2-202** is amended to read:

489 **63G-2-202. Access to private, controlled, and protected documents.**

490 (1) Upon request, and except as provided in Subsection (11)(a), a governmental entity  
491 shall disclose a private record to:

492 (a) the subject of the record;



493 (b) the parent or legal guardian of an unemancipated minor who is the subject of the  
494 record;

495 (c) the legal guardian of a legally incapacitated individual who is the subject of the  
496 record;

497 (d) any other individual who:

498 (i) has a power of attorney from the subject of the record;

499 (ii) submits a notarized release from the subject of the record or the individual's legal  
500 representative dated no more than 90 days before the date the request is made; or

501 (iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a  
502 health care provider, as defined in Section 26-33a-102, if releasing the record or information in  
503 the record is consistent with normal professional practice and medical ethics; or

504 (e) any person to whom the record must be provided pursuant to:

505 (i) court order as provided in Subsection (7); or

506 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena  
507 Powers.

508 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:

509 (i) a physician, psychologist, certified social worker, insurance provider or producer, or  
510 a government public health agency upon submission of:

511 (A) a release from the subject of the record that is dated no more than 90 days prior to  
512 the date the request is made; and

513 (B) a signed acknowledgment of the terms of disclosure of controlled information as  
514 provided by Subsection (2)(b); and

515 (ii) any person to whom the record must be disclosed pursuant to:

516 (A) a court order as provided in Subsection (7); or

517 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena  
518 Powers.

519 (b) A person who receives a record from a governmental entity in accordance with  
520 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,  
521 including the subject of the record.

522 (3) If there is more than one subject of a private or controlled record, the portion of the  
523 record that pertains to another subject shall be segregated from the portion that the requester is

524 entitled to inspect.

525 (4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental  
526 entity shall disclose a protected record to:

527 (a) the person who submitted the record;

528 (b) any other individual who:

529 (i) has a power of attorney from all persons, governmental entities, or political  
530 subdivisions whose interests were sought to be protected by the protected classification; or

531 (ii) submits a notarized release from all persons, governmental entities, or political  
532 subdivisions whose interests were sought to be protected by the protected classification or from  
533 their legal representatives dated no more than 90 days prior to the date the request is made;

534 (c) any person to whom the record must be provided pursuant to:

535 (i) a court order as provided in Subsection (7); or

536 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena  
537 Powers; or

538 (d) the owner of a mobile home park, subject to the conditions of Subsection  
539 41-1a-116(5).

540 (5) A governmental entity may disclose a private, controlled, or protected record to  
541 another governmental entity, political subdivision, another state, the United States, or a foreign  
542 government only as provided by Section 63G-2-206.

543 (6) Before releasing a private, controlled, or protected record, the governmental entity  
544 shall obtain evidence of the requester's identity.

545 (7) A governmental entity shall disclose a record pursuant to the terms of a court order  
546 signed by a judge from a court of competent jurisdiction, provided that:

547 (a) the record deals with a matter in controversy over which the court has jurisdiction;

548 (b) the court has considered the merits of the request for access to the record;

549 (c) the court has considered and, where appropriate, limited the requester's use and  
550 further disclosure of the record in order to protect:

551 (i) privacy interests in the case of private or controlled records;

552 (ii) business confidentiality interests in the case of records protected under Subsection  
553 63G-2-305(1), (2), [~~40~~] (39)(a)(ii), or [~~40~~] (39)(a)(vi); and

554 (iii) privacy interests or the public interest in the case of other protected records;

555 (d) to the extent the record is properly classified private, controlled, or protected, the  
556 interests favoring access, considering limitations thereon, [~~outweigh~~] are greater than or equal  
557 to the interests favoring restriction of access; and

558 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection  
559 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

560 (8) (a) A governmental entity may disclose or authorize disclosure of private or  
561 controlled records for research purposes if the governmental entity:

562 (i) determines that the research purpose cannot reasonably be accomplished without  
563 use or disclosure of the information to the researcher in individually identifiable form;

564 (ii) determines that:

565 (A) the proposed research is bona fide; and

566 (B) the value of the research [~~outweighs~~] is greater than or equal to the infringement  
567 upon personal privacy;

568 (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of  
569 the records; and

570 (B) requires the removal or destruction of the individual identifiers associated with the  
571 records as soon as the purpose of the research project has been accomplished;

572 (iv) prohibits the researcher from:

573 (A) disclosing the record in individually identifiable form, except as provided in  
574 Subsection (8)(b); or

575 (B) using the record for purposes other than the research approved by the governmental  
576 entity; and

577 (v) secures from the researcher a written statement of the researcher's understanding of  
578 and agreement to the conditions of this Subsection (8) and the researcher's understanding that  
579 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution  
580 under Section 63G-2-801.

581 (b) A researcher may disclose a record in individually identifiable form if the record is  
582 disclosed for the purpose of auditing or evaluating the research program and no subsequent use  
583 or disclosure of the record in individually identifiable form will be made by the auditor or  
584 evaluator except as provided by this section.

585 (c) A governmental entity may require indemnification as a condition of permitting

586 research under this Subsection (8).

587 (9) (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity  
588 may disclose to persons other than those specified in this section records that are:

589 (i) private under Section 63G-2-302; or

590 (ii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for  
591 business confidentiality has been made under Section 63G-2-309.

592 (b) Under Subsection 63G-2-403(11)(b), the records committee may require the  
593 disclosure to persons other than those specified in this section of records that are:

594 (i) private under Section 63G-2-302;

595 (ii) controlled under Section 63G-2-304; or

596 (iii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for  
597 business confidentiality has been made under Section 63G-2-309.

598 (c) Under Subsection 63G-2-404(8), the court may require the disclosure of records  
599 that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected  
600 under Section 63G-2-305 to persons other than those specified in this section.

601 (10) A record contained in the Management Information System, created in Section  
602 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be  
603 disclosed to any person except the person who is alleged in the report to be a perpetrator of  
604 abuse, neglect, or dependency.

605 (11) (a) A private record described in Subsection 63G-2-302(2)(f) may only be  
606 disclosed as provided in Subsection (1)(e).

607 (b) A protected record described in Subsection 63G-2-305[~~(43)~~](42) may only be  
608 disclosed as provided in Subsection (4)(c) or Section 62A-3-312.

609 (12) (a) A private, protected, or controlled record described in Section 62A-16-301  
610 shall be disclosed as required under:

611 (i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and

612 (ii) Subsections 62A-16-302(1) and (6).

613 (b) A record disclosed under Subsection (12)(a) shall retain its character as private,  
614 protected, or controlled.

615 Section 8. Section **63G-2-206** is amended to read:

616 **63G-2-206. Sharing records.**

617 (1) A governmental entity may provide a record that is private, controlled, or protected  
618 to another governmental entity, a government-managed corporation, a political subdivision, the  
619 federal government, or another state if the requesting entity:

620 (a) serves as a repository or archives for purposes of historical preservation,  
621 administrative maintenance, or destruction;

622 (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the  
623 record is necessary to a proceeding or investigation;

624 (c) is authorized by state statute to conduct an audit and the record is needed for that  
625 purpose;

626 (d) is one that collects information for presentence, probationary, or parole purposes; or

627 (e) (i) is:

628 (A) the Legislature;

629 (B) a legislative committee;

630 (C) a member of the Legislature; or

631 (D) a legislative staff member acting at the request of the Legislature, a legislative  
632 committee, or a member of the Legislature; and

633 (ii) requests the record in relation to the Legislature's duties including:

634 (A) the preparation or review of a legislative proposal or legislation;

635 (B) appropriations; or

636 (C) an investigation or review conducted by the Legislature or a legislative committee.

637 (2) (a) A governmental entity may provide a private, controlled, or protected record or  
638 record series to another governmental entity, a political subdivision, a government-managed  
639 corporation, the federal government, or another state if the requesting entity provides written  
640 assurance:

641 (i) that the record or record series is necessary to the performance of the governmental  
642 entity's duties and functions;

643 (ii) that the record or record series will be used for a purpose similar to the purpose for  
644 which the information in the record or record series was collected or obtained; and

645 (iii) that the use of the record or record series produces a public benefit that

646 [~~outweighs~~] is greater than or equal to the individual privacy right that protects the record or  
647 record series.

648 (b) A governmental entity may provide a private, controlled, or protected record or  
649 record series to a contractor or a private provider according to the requirements of Subsection  
650 (6)(b).

651 (3) (a) A governmental entity shall provide a private, controlled, or protected record to  
652 another governmental entity, a political subdivision, a government-managed corporation, the  
653 federal government, or another state if the requesting entity:

654 (i) is entitled by law to inspect the record;

655 (ii) is required to inspect the record as a condition of participating in a state or federal  
656 program or for receiving state or federal funds; or

657 (iii) is an entity described in Subsection (1)(a), (b), (c), (d), or (e).

658 (b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection  
659 63G-2-305(4).

660 (4) Before disclosing a record or record series under this section to another  
661 governmental entity, another state, the United States, a foreign government, or to a contractor  
662 or private provider, the originating governmental entity shall:

663 (a) inform the recipient of the record's classification and the accompanying restrictions  
664 on access; and

665 (b) if the recipient is not a governmental entity to which this chapter applies, obtain the  
666 recipient's written agreement which may be by mechanical or electronic transmission that it  
667 will abide by those restrictions on access unless a statute, federal regulation, or interstate  
668 agreement otherwise governs the sharing of the record or record series.

669 (5) A governmental entity may disclose a record to another state, the United States, or a  
670 foreign government for the reasons listed in Subsections (1) and (2) without complying with  
671 the procedures of Subsection (2) or (4) if disclosure is authorized by executive agreement,  
672 treaty, federal statute, compact, federal regulation, or state statute.

673 (6) (a) Subject to Subsections (6)(b) and (c), an entity receiving a record under this  
674 section is subject to the same restrictions on disclosure of the record as the originating entity.

675 (b) A contractor or a private provider may receive information under this section only  
676 if:

677 (i) the contractor or private provider's use of the record or record series produces a  
678 public benefit that ~~[outweighs]~~ is greater than or equal to the individual privacy right that

679 protects the record or record series;

680 (ii) the record or record series it requests:

681 (A) is necessary for the performance of a contract with a governmental entity;

682 (B) will only be used for the performance of the contract with the governmental entity;

683 (C) will not be disclosed to any other person; and

684 (D) will not be used for advertising or solicitation purposes; and

685 (iii) the contractor or private provider gives written assurance to the governmental

686 entity that is providing the record or record series that it will adhere to the restrictions of this

687 Subsection (6)(b).

688 (c) The classification of a record already held by a governmental entity and the

689 applicable restrictions on disclosure of that record are not affected by the governmental entity's

690 receipt under this section of a record with a different classification that contains information

691 that is also included in the previously held record.

692 (7) Notwithstanding any other provision of this section, if a more specific court rule or

693 order, state statute, federal statute, or federal regulation prohibits or requires sharing

694 information, that rule, order, statute, or federal regulation controls.

695 (8) The following records may not be shared under this section:

696 (a) records held by the Division of Oil, Gas, and Mining that pertain to any person and

697 that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas, and

698 Mining;

699 (b) records of publicly funded libraries as described in Subsection 63G-2-302(1)(c);

700 and

701 (c) a record described in Section 63G-12-210.

702 (9) Records that may evidence or relate to a violation of law may be disclosed to a

703 government prosecutor, peace officer, or auditor.

704 Section 9. Section **63G-2-301** is amended to read:

705 **63G-2-301. Records that must be disclosed.**

706 (1) As used in this section:

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

709 (b) "Business email address" means a single email address of a governmental agency

710 designated for the public to contact an employee or officer of the governmental agency.

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

713 (2) The following records are public except to the extent they contain information  
714 expressly permitted to be treated confidentially under the provisions of Subsections  
715 63G-2-201(3)(b) and (6)(a):

716 (a) laws;

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

721 (i) undercover law enforcement personnel; and

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

724 (c) final opinions, including concurring and dissenting opinions, and orders that are  
725 made by a governmental entity in an administrative, adjudicative, or judicial proceeding except  
726 that if the proceedings were properly closed to the public, the opinion and order may be  
727 withheld to the extent that they contain information that is private, controlled, or protected;

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

730 (e) information contained in or compiled from a transcript, minutes, or report of the  
731 open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open  
732 and Public Meetings Act, including the records of all votes of each member of the  
733 governmental entity;

734 (f) judicial records unless a court orders the records to be restricted under the rules of  
735 civil or criminal procedure or unless the records are private under this chapter;

736 (g) unless otherwise classified as private under Section 63G-2-303, records or parts of  
737 records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning  
738 commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust  
739 Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or  
740 other governmental entities that give public notice of:



- 741 (i) titles or encumbrances to real property;
- 742 (ii) restrictions on the use of real property;
- 743 (iii) the capacity of persons to take or convey title to real property; or
- 744 (iv) tax status for real and personal property;
- 745 (h) records of the Department of Commerce that evidence incorporations, mergers,
- 746 name changes, and uniform commercial code filings;
- 747 (i) data on individuals that would otherwise be private under this chapter if the
- 748 individual who is the subject of the record has given the governmental entity written
- 749 permission to make the records available to the public;
- 750 (j) documentation of the compensation that a governmental entity pays to a contractor
- 751 or private provider;
- 752 (k) summary data;
- 753 (l) voter registration records, including an individual's voting history, except for those
- 754 parts of the record that are classified as private in Subsection 63G-2-302(1)(i);
- 755 (m) for an elected official, as defined in Section 11-47-102, a telephone number, if
- 756 available, and email address, if available, where that elected official may be reached as required
- 757 in Title 11, Chapter 47, Access to Elected Officials;
- 758 (n) for a school community council member, a telephone number, if available, and
- 759 email address, if available, where that elected official may be reached directly as required in
- 760 Section 53A-1a-108; and
- 761 (o) annual audited financial statements of the Utah Educational Savings Plan described
- 762 in Section 53B-8a-111.
- 763 (3) The following records are normally public, but to the extent that a record is
- 764 expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b),
- 765 Section 63G-2-302, 63G-2-304, or 63G-2-305:
- 766 (a) administrative staff manuals, instructions to staff, and statements of policy;
- 767 (b) records documenting a contractor's or private provider's compliance with the terms
- 768 of a contract with a governmental entity;
- 769 (c) records documenting the services provided by a contractor or a private provider to
- 770 the extent the records would be public if prepared by the governmental entity;
- 771 (d) contracts entered into by a governmental entity;

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

774 (f) records relating to government assistance or incentives publicly disclosed,  
775 contracted for, or given by a governmental entity, encouraging a person to expand or relocate a  
776 business in Utah, except as provided in Subsection 63G-2-305[~~(35)~~](34);

777 (g) chronological logs and initial contact reports;

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

781 (i) empirical data contained in drafts if:

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

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

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

787 (i) a governmental entity;

788 (ii) a political subdivision;

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

791 (iv) a government-managed corporation; or

792 (v) a contractor or private provider;

793 (k) drafts that have never been finalized but were relied upon by the governmental  
794 entity in carrying out action or policy;

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

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

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

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

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

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

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

809 (q) final audit reports;

810 (r) occupational and professional licenses;

811 (s) business licenses; and

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

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

817 Section 10. Section **63G-2-305** is amended to read:

818 **63G-2-305. Protected records.**

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

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

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

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

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

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

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

834 substantial financial injury to the governmental entity or state economy;

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

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

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

846 (a) a request for bids;

847 (b) a request for proposals;

848 (c) a grant; or

849 (d) other similar document;

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

853 (a) public interest in obtaining access to the information [~~outweighs~~] is greater than or  
854 equal to the governmental entity's need to acquire the property on the best terms possible;

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

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

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

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

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

869 (a) the public interest in access [~~outweighs~~] is greater than or equal to the interests in  
870 restricting access, including the governmental entity's interest in maximizing the financial  
871 benefit of the transaction; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

917 (16) records that are subject to the attorney client privilege;

918 (17) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,  
919 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,  
920 quasi-judicial, or administrative proceeding;

921 ~~[(19)]~~ (18) (a) (i) personal files of a state legislator, including personal correspondence  
922 to or from a member of the Legislature; and

923 (ii) notwithstanding Subsection ~~[(19)]~~ (18)(a)(i), correspondence that gives notice of  
924 legislative action or policy may not be classified as protected under this section; and

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

927 (A) members of a legislative body;

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

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

930 (ii) notwithstanding Subsection [~~(19)~~] (18)(b)(i), a communication that gives notice of

931 legislative action or policy may not be classified as protected under this section;

932 [~~(20)~~] (19) (a) records in the custody or control of the Office of Legislative Research

933 and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated

934 legislation or contemplated course of action before the legislator has elected to support the

935 legislation or course of action, or made the legislation or course of action public; and

936 (b) notwithstanding Subsection [~~(20)~~] (19)(a), the form to request legislation submitted

937 to the Office of Legislative Research and General Counsel is a public document unless a

938 legislator asks that the records requesting the legislation be maintained as protected records

939 until such time as the legislator elects to make the legislation or course of action public;

940 [~~(21)~~] (20) research requests from legislators to the Office of Legislative Research and

941 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared

942 in response to these requests;

943 [~~(22)~~] (21) drafts, unless otherwise classified as public;

944 [~~(23)~~] (22) records concerning a governmental entity's strategy about:

945 (a) collective bargaining; or

946 (b) reasonably anticipated, imminent, or pending litigation;

947 [~~(24)~~] (23) records of investigations of loss occurrences and analyses of loss

948 occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance

949 Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

950 [~~(25)~~] (24) records, other than personnel evaluations, that contain a personal

951 recommendation concerning an individual if disclosure would constitute a clearly unwarranted

952 invasion of personal privacy, or disclosure is not in the public interest;

953 [~~(26)~~] (25) records that reveal the location of historic, prehistoric, paleontological, or

954 biological resources that if known would jeopardize the security of those resources or of

955 valuable historic, scientific, educational, or cultural information;

956 [~~(27)~~] (26) records of independent state agencies if the disclosure of the records would

957 conflict with the fiduciary obligations of the agency;

958            [~~(28)~~] (27) records of an institution within the state system of higher education defined  
959 in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,  
960 retention decisions, and promotions, which could be properly discussed in a meeting closed in  
961 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of  
962 the final decisions about tenure, appointments, retention, promotions, or those students  
963 admitted, may not be classified as protected under this section;

964            [~~(29)~~] (28) records of the governor's office, including budget recommendations,  
965 legislative proposals, and policy statements, that if disclosed would reveal the governor's  
966 contemplated policies or contemplated courses of action before the governor has implemented  
967 or rejected those policies or courses of action or made them public;

968            [~~(30)~~] (29) records of the Office of the Legislative Fiscal Analyst relating to budget  
969 analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final  
970 recommendations in these areas;

971            [~~(31)~~] (30) records provided by the United States or by a government entity outside the  
972 state that are given to the governmental entity with a requirement that they be managed as  
973 protected records if the providing entity certifies that the record would not be subject to public  
974 disclosure if retained by it;

975            [~~(32)~~] (31) transcripts, minutes, or reports of the closed portion of a meeting of a public  
976 body except as provided in Section 52-4-206;

977            [~~(33)~~] (32) records that would reveal the contents of settlement negotiations but not  
978 including final settlements or empirical data to the extent that they are not otherwise exempt  
979 from disclosure;

980            [~~(34)~~] (33) memoranda prepared by staff and used in the decision-making process by  
981 an administrative law judge, a member of the Board of Pardons and Parole, or a member of any  
982 other body charged by law with performing a quasi-judicial function;

983            [~~(35)~~] (34) records that would reveal negotiations regarding assistance or incentives  
984 offered by or requested from a governmental entity for the purpose of encouraging a person to  
985 expand or locate a business in Utah, but only if disclosure would result in actual economic  
986 harm to the person or place the governmental entity at a competitive disadvantage, but this  
987 section may not be used to restrict access to a record evidencing a final contract;

988            [~~(36)~~] (35) materials to which access must be limited for purposes of securing or



989 maintaining the governmental entity's proprietary protection of intellectual property rights  
990 including patents, copyrights, and trade secrets;

991 [~~(37)~~] (36) the name of a donor or a prospective donor to a governmental entity,  
992 including an institution within the state system of higher education defined in Section  
993 53B-1-102, and other information concerning the donation that could reasonably be expected to  
994 reveal the identity of the donor, provided that:

995 (a) the donor requests anonymity in writing;

996 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be  
997 classified protected by the governmental entity under this Subsection [~~(37)~~] (36); and

998 (c) except for an institution within the state system of higher education defined in  
999 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged  
1000 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority  
1001 over the donor, a member of the donor's immediate family, or any entity owned or controlled  
1002 by the donor or the donor's immediate family;

1003 [~~(38)~~] (37) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
1004 73-18-13;

1005 [~~(39)~~] (38) a notification of workers' compensation insurance coverage described in  
1006 Section 34A-2-205;

1007 [~~(40)~~] (39) (a) the following records of an institution within the state system of higher  
1008 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,  
1009 or received by or on behalf of faculty, staff, employees, or students of the institution:

1010 (i) unpublished lecture notes;

1011 (ii) unpublished notes, data, and information:

1012 (A) relating to research; and

1013 (B) of:

1014 (I) the institution within the state system of higher education defined in Section  
1015 53B-1-102; or

1016 (II) a sponsor of sponsored research;

1017 (iii) unpublished manuscripts;

1018 (iv) creative works in process;

1019 (v) scholarly correspondence; and

1020 (vi) confidential information contained in research proposals;

1021 (b) Subsection [~~(40)~~] (39)(a) may not be construed to prohibit disclosure of public  
1022 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

1023 (c) Subsection [~~(40)~~] (39)(a) may not be construed to affect the ownership of a record;

1024 [~~(41)~~] (40) (a) records in the custody or control of the Office of Legislative Auditor  
1025 General that would reveal the name of a particular legislator who requests a legislative audit  
1026 prior to the date that audit is completed and made public; and

1027 (b) notwithstanding Subsection [~~(41)~~] (40)(a), a request for a legislative audit  
1028 submitted to the Office of the Legislative Auditor General is a public document unless the  
1029 legislator asks that the records in the custody or control of the Office of Legislative Auditor  
1030 General that would reveal the name of a particular legislator who requests a legislative audit be  
1031 maintained as protected records until the audit is completed and made public;

1032 [~~(42)~~] (41) records that provide detail as to the location of an explosive, including a  
1033 map or other document that indicates the location of:

1034 (a) a production facility; or

1035 (b) a magazine;

1036 [~~(43)~~] (42) information:

1037 (a) contained in the statewide database of the Division of Aging and Adult Services  
1038 created by Section 62A-3-311.1; or

1039 (b) received or maintained in relation to the Identity Theft Reporting Information  
1040 System (IRIS) established under Section 67-5-22;

1041 [~~(44)~~] (43) information contained in the Management Information System and  
1042 Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

1043 [~~(45)~~] (44) information regarding National Guard operations or activities in support of  
1044 the National Guard's federal mission;

1045 [~~(46)~~] (45) records provided by any pawn or secondhand business to a law enforcement  
1046 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and  
1047 Secondhand Merchandise Transaction Information Act;

1048 [~~(47)~~] (46) information regarding food security, risk, and vulnerability assessments  
1049 performed by the Department of Agriculture and Food;

1050 [~~(48)~~] (47) except to the extent that the record is exempt from this chapter pursuant to

1051 Section 63G-2-106, records related to an emergency plan or program, a copy of which is  
1052 provided to or prepared or maintained by the Division of Emergency Management, and the  
1053 disclosure of which would jeopardize:

1054 (a) the safety of the general public; or

1055 (b) the security of:

1056 (i) governmental property;

1057 (ii) governmental programs; or

1058 (iii) the property of a private person who provides the Division of Emergency

1059 Management information;

1060 [~~49~~] (48) records of the Department of Agriculture and Food relating to the National  
1061 Animal Identification System or any other program that provides for the identification, tracing,  
1062 or control of livestock diseases, including any program established under Title 4, Chapter 24,  
1063 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and  
1064 Quarantine;

1065 [~~50~~] (49) as provided in Section 26-39-501:

1066 (a) information or records held by the Department of Health related to a complaint  
1067 regarding a child care program or residential child care which the department is unable to  
1068 substantiate; and

1069 (b) information or records related to a complaint received by the Department of Health  
1070 from an anonymous complainant regarding a child care program or residential child care;

1071 [~~51~~] (50) unless otherwise classified as public under Section 63G-2-301 and except  
1072 as provided under Section 41-1a-116, an individual's home address, home telephone number,  
1073 or personal mobile phone number, if:

1074 (a) the individual is required to provide the information in order to comply with a law,  
1075 ordinance, rule, or order of a government entity; and

1076 (b) the subject of the record has a reasonable expectation that this information will be  
1077 kept confidential due to:

1078 (i) the nature of the law, ordinance, rule, or order; and

1079 (ii) the individual complying with the law, ordinance, rule, or order;

1080 [~~52~~] (51) the name, home address, work addresses, and telephone numbers of an  
1081 individual that is engaged in, or that provides goods or services for, medical or scientific

1082 research that is:

1083 (a) conducted within the state system of higher education, as defined in Section  
1084 53B-1-102; and

1085 (b) conducted using animals;

1086 [~~53~~] (52) an initial proposal under Title 63M, Chapter 1, Part 26, Government  
1087 Procurement Private Proposal Program, to the extent not made public by rules made under that  
1088 chapter;

1089 [~~54~~] (53) in accordance with Section 78A-12-203, any record of the Judicial  
1090 Performance Evaluation Commission concerning an individual commissioner's vote on  
1091 whether or not to recommend that the voters retain a judge;

1092 [~~55~~] (54) information collected and a report prepared by the Judicial Performance  
1093 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter  
1094 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,  
1095 the information or report;

1096 [~~56~~] (55) records contained in the Management Information System created in  
1097 Section 62A-4a-1003;

1098 [~~57~~] (56) records provided or received by the Public Lands Policy Coordinating  
1099 Office in furtherance of any contract or other agreement made in accordance with Section  
1100 63J-4-603;

1101 [~~58~~] (57) information requested by and provided to the Utah State 911 Committee  
1102 under Section 53-10-602;

1103 [~~59~~] (58) recorded Children's Justice Center investigative interviews, both video and  
1104 audio, the release of which are governed by Section 77-37-4;

1105 [~~60~~] (59) in accordance with Section 73-10-33:

1106 (a) a management plan for a water conveyance facility in the possession of the Division  
1107 of Water Resources or the Board of Water Resources; or

1108 (b) an outline of an emergency response plan in possession of the state or a county or  
1109 municipality;

1110 [~~61~~] (60) the following records in the custody or control of the Office of Inspector  
1111 General of Medicaid Services, created in Section 63J-4a-201:

1112 (a) records that would disclose information relating to allegations of personal

1113 misconduct, gross mismanagement, or illegal activity of a person if the information or  
1114 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services  
1115 through other documents or evidence, and the records relating to the allegation are not relied  
1116 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation  
1117 report or final audit report;

1118 (b) records and audit workpapers to the extent they would disclose the identity of a  
1119 person who, during the course of an investigation or audit, communicated the existence of any  
1120 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or  
1121 regulation adopted under the laws of this state, a political subdivision of the state, or any  
1122 recognized entity of the United States, if the information was disclosed on the condition that  
1123 the identity of the person be protected;

1124 (c) before the time that an investigation or audit is completed and the final  
1125 investigation or final audit report is released, records or drafts circulated to a person who is not  
1126 an employee or head of a governmental entity for the person's response or information;

1127 (d) records that would disclose an outline or part of any investigation, audit survey  
1128 plan, or audit program; or

1129 (e) requests for an investigation or audit, if disclosure would risk circumvention of an  
1130 investigation or audit;

1131 [~~(62)~~] (61) records that reveal methods used by the Office of Inspector General of  
1132 Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud,  
1133 waste, or abuse;

1134 [~~(63)~~] (62) information provided to the Department of Health or the Division of  
1135 Occupational and Professional Licensing under Subsection 58-68-304(3) or (4); and

1136 [~~(64)~~] (63) a record described in Section 63G-12-210.

1137 Section 11. Section **63G-2-309** is amended to read:

1138 **63G-2-309. Confidentiality claims.**

1139 (1) (a) (i) Any person who provides to a governmental entity a record that the person  
1140 believes should be protected under Subsection 63G-2-305(1) or (2) or both Subsections  
1141 63G-2-305(1) and (2) shall provide with the record:

1142 (A) a written claim of business confidentiality; and

1143 (B) a concise statement of reasons supporting the claim of business confidentiality.

1144 (ii) Any of the following who provides to an institution within the state system of  
1145 higher education defined in Section 53B-1-102 a record that the person or governmental entity  
1146 believes should be protected under Subsection 63G-2-305[~~(40)~~](39)(a)(ii) or (vi) or both  
1147 Subsections 63G-2-305[~~(40)~~](39)(a)(ii) and (vi) shall provide the institution within the state  
1148 system of higher education a written claim of business confidentiality in accordance with  
1149 Section 53B-16-304:

- 1150 (A) a person;
- 1151 (B) a federal governmental entity;
- 1152 (C) a state governmental entity; or
- 1153 (D) a local governmental entity.

1154 (b) A person or governmental entity who complies with this Subsection (1) shall be  
1155 notified by the governmental entity to whom the request for a record is made if:

- 1156 (i) a record claimed to be protected under one of the following is classified public:
  - 1157 (A) Subsection 63G-2-305(1);
  - 1158 (B) Subsection 63G-2-305(2);
  - 1159 (C) Subsection 63G-2-305[~~(40)~~](39)(a)(ii);
  - 1160 (D) Subsection 63G-2-305[~~(40)~~](39)(a)(vi); or
  - 1161 (E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D);

1162 or

1163 (ii) the governmental entity to whom the request for a record is made determines that  
1164 the record claimed to be protected under a provision listed in Subsection (1)(b)(i) should be  
1165 released after balancing interests under Subsection 63G-2-201(5)(b) or 63G-2-401(6).

1166 (2) Except as provided by court order, the governmental entity to whom the request for  
1167 a record is made may not disclose a record claimed to be protected under a provision listed in  
1168 Subsection (1)(b)(i) but which the governmental entity or records committee determines should  
1169 be disclosed until the period in which to bring an appeal expires or the end of the appeals  
1170 process, including judicial appeal. This Subsection (2) does not apply where the claimant, after  
1171 notice, has waived the claim by not appealing or intervening before the records committee.

1172 (3) Disclosure or acquisition of information under this chapter does not constitute  
1173 misappropriation under Subsection 13-24-2(2).

1174 Section 12. Section **63G-2-401** is amended to read:

1175           **63G-2-401. Appeal to head of governmental entity.**

1176           (1) (a) Any person aggrieved by a governmental entity's access determination under  
1177 this chapter, including a person not a party to the governmental entity's proceeding, may appeal  
1178 the determination within 30 days to the chief administrative officer of the governmental entity  
1179 by filing a notice of appeal.

1180           (b) If a governmental entity claims extraordinary circumstances and specifies the date  
1181 when the records will be available under Subsection 63G-2-204(3), and, if the requester  
1182 believes the extraordinary circumstances do not exist or that the time specified is unreasonable,  
1183 the requester may appeal the governmental entity's claim of extraordinary circumstances or date  
1184 for compliance within 30 days after notification of a claim of extraordinary circumstances by  
1185 the governmental entity, despite the lack of a "determination" or its equivalent under  
1186 Subsection 63G-2-204(7).

1187           (2) The notice of appeal shall contain the following information:

1188           (a) the petitioner's name, mailing address, and daytime telephone number; and

1189           (b) the relief sought.

1190           (3) The petitioner may file a short statement of facts, reasons, and legal authority in  
1191 support of the appeal.

1192           (4) (a) If the appeal involves a record that is the subject of a business confidentiality  
1193 claim under Section 63G-2-309, the chief administrative officer shall:

1194           (i) send notice of the requester's appeal to the business confidentiality claimant within  
1195 three business days after receiving notice, except that if notice under this section must be given  
1196 to more than 35 persons, it shall be given as soon as reasonably possible; and

1197           (ii) send notice of the business confidentiality claim and the schedule for the chief  
1198 administrative officer's determination to the requester within three business days after receiving  
1199 notice of the requester's appeal.

1200           (b) The claimant shall have seven business days after notice is sent by the  
1201 administrative officer to submit further support for the claim of business confidentiality.

1202           (5) (a) The chief administrative officer shall make a determination on the appeal within  
1203 the following period of time:

1204           (i) within five business days after the chief administrative officer's receipt of the notice  
1205 of appeal; or

1206 (ii) within 12 business days after the governmental entity sends the requester's notice of  
1207 appeal to a person who submitted a claim of business confidentiality.

1208 (b) If the chief administrative officer fails to make a determination within the time  
1209 specified in Subsection (5)(a), the failure shall be considered the equivalent of an order denying  
1210 the appeal.

1211 (c) The provisions of this section notwithstanding, the parties participating in the  
1212 proceeding may, by agreement, extend the time periods specified in this section.

1213 (6) ~~[The]~~ Except as provided in Section 63G-2-406, the chief administrative officer  
1214 may, upon consideration and weighing of the various interests and public policies pertinent to  
1215 the classification and disclosure or nondisclosure, order the disclosure of information properly  
1216 classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if  
1217 the interests favoring access ~~[outweigh]~~ are greater than or equal to the interests favoring  
1218 restriction of access.

1219 (7) The governmental entity shall send written notice of the determination of the chief  
1220 administrative officer to all participants. If the chief administrative officer affirms the denial in  
1221 whole or in part, the denial shall include a statement that the requester has the right to appeal  
1222 the denial to either the records committee or district court, the time limits for filing an appeal,  
1223 and the name and business address of the executive secretary of the records committee.

1224 (8) A person aggrieved by a governmental entity's classification or designation  
1225 determination under this chapter, but who is not requesting access to the records, may appeal  
1226 that determination using the procedures provided in this section. If a nonrequester is the only  
1227 appellant, the procedures provided in this section shall apply, except that the determination on  
1228 the appeal shall be made within 30 days after receiving the notice of appeal.

1229 (9) The duties of the chief administrative officer under this section may be delegated.  
1230 Section 13. Section **63G-2-403** is amended to read:

1231 **63G-2-403. Appeals to the records committee.**

1232 (1) A petitioner, including an aggrieved person who did not participate in the appeal to  
1233 the governmental entity's chief administrative officer, may appeal to the records committee by  
1234 filing a notice of appeal with the executive secretary no later than:

1235 (a) 30 days after the day on which the chief administrative officer of the governmental  
1236 entity ~~[has granted or denied]~~ grants or denies the record request in whole or in part, including



1237 a denial under Subsection 63G-2-204~~(7)~~(8);

1238 (b) 45 days after the day on which the original request for a record is made if:

1239 (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

1240 (ii) the chief administrative officer failed to make a determination under Section

1241 63G-2-401.

1242 (2) The notice of appeal shall contain the following information:

1243 (a) the petitioner's name, mailing address, and daytime telephone number;

1244 (b) a copy of any denial of the record request; and

1245 (c) the relief sought.

1246 (3) The petitioner:

1247 (a) shall, on the day on which the petitioner files an appeal to the records committee,

1248 serve a copy of the appeal on the government entity, described in Subsection (1), to which the

1249 appeal relates; and

1250 (b) may file a short statement of facts, reasons, and legal authority in support of the

1251 appeal.

1252 (4) (a) Except as provided in Subsection (4)(b), no later than five business days after

1253 receiving a notice of appeal, the executive secretary of the records committee shall:

1254 (i) schedule a hearing for the records committee to discuss the appeal at the next

1255 regularly scheduled committee meeting falling at least 14 days after the date the notice of

1256 appeal is filed but no longer than 52 calendar days after the date the notice of appeal was filed

1257 except that the records committee may schedule an expedited hearing upon application of the

1258 petitioner and good cause shown;

1259 (ii) send a copy of the notice of hearing to the petitioner; and

1260 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing

1261 to:

1262 (A) each member of the records committee;

1263 (B) the records officer and the chief administrative officer of the governmental entity

1264 from which the appeal originated;

1265 (C) any person who made a business confidentiality claim under Section 63G-2-309 for

1266 a record that is the subject of the appeal; and

1267 (D) all persons who participated in the proceedings before the governmental entity's

1268 chief administrative officer.

1269 (b) (i) The executive secretary of the records committee may decline to schedule a  
1270 hearing if the record series that is the subject of the appeal has been found by the committee in  
1271 a previous hearing involving the same government entity to be appropriately classified as  
1272 private, controlled, or protected.

1273 (ii) (A) If the executive secretary of the records committee declines to schedule a  
1274 hearing, the executive secretary of the records committee shall send a notice to the petitioner  
1275 indicating that the request for hearing has been denied and the reason for the denial.

1276 (B) The committee shall make rules to implement this section as provided by Title  
1277 63G, Chapter 3, Utah Administrative Rulemaking Act.

1278 (5) (a) A written statement of facts, reasons, and legal authority in support of the  
1279 governmental entity's position must be submitted to the executive secretary of the records  
1280 committee not later than five business days before the hearing.

1281 (b) The governmental entity shall send a copy of the written statement to the petitioner  
1282 by first class mail, postage prepaid. The executive secretary shall forward a copy of the written  
1283 statement to each member of the records committee.

1284 (6) (a) No later than 10 business days after the notice of appeal is sent by the executive  
1285 secretary, a person whose legal interests may be substantially affected by the proceeding may  
1286 file a request for intervention before the records committee.

1287 (b) Any written statement of facts, reasons, and legal authority in support of the  
1288 intervener's position shall be filed with the request for intervention.

1289 (c) The person seeking intervention shall provide copies of the statement described in  
1290 Subsection (6)(b) to all parties to the proceedings before the records committee.

1291 (7) The records committee shall hold a hearing within the period of time described in  
1292 Subsection (4).

1293 (8) At the hearing, the records committee shall allow the parties to testify, present  
1294 evidence, and comment on the issues. The records committee may allow other interested  
1295 persons to comment on the issues.

1296 (9) (a) The records committee may review the disputed records. However, if the  
1297 committee is weighing the various interests under Subsection (11), the committee must review  
1298 the disputed records. The review shall be in camera.

1299 (b) Members of the records committee may not disclose any information or record  
1300 reviewed by the committee in camera unless the disclosure is otherwise authorized by this  
1301 chapter.

1302 (10) (a) Discovery is prohibited, but the records committee may issue subpoenas or  
1303 other orders to compel production of necessary evidence.

1304 (b) When the subject of a records committee subpoena disobeys or fails to comply with  
1305 the subpoena, the records committee may file a motion for an order to compel obedience to the  
1306 subpoena with the district court.

1307 (c) The records committee's review shall be de novo.

1308 (11) (a) No later than five business days after the hearing, the records committee shall  
1309 issue a signed order either granting the petition in whole or in part or upholding the  
1310 determination of the governmental entity in whole or in part.

1311 (b) ~~[The]~~ Except as provided in Section 63G-2-406, the records committee may, upon  
1312 consideration and weighing of the various interests and public policies pertinent to the  
1313 classification and disclosure or nondisclosure, order the disclosure of information properly  
1314 classified as private, controlled, or protected if the public interest favoring access ~~[outweighs]~~  
1315 is greater than or equal to the interest favoring restriction of access.

1316 (c) In making a determination under Subsection (11)(b), the records committee shall  
1317 consider and, where appropriate, limit the requester's use and further disclosure of the record in  
1318 order to protect:

1319 (i) privacy interests in the case of a private or controlled record;

1320 (ii) business confidentiality interests in the case of a record protected under Subsection  
1321 63G-2-305(1), (2), ~~[(40)]~~ (39)(a)(ii), or ~~[(40)]~~ (39)(a)(vi); and

1322 (iii) privacy interests or the public interest in the case of other protected records.

1323 (12) The order of the records committee shall include:

1324 (a) a statement of reasons for the decision, including citations to this chapter, court rule  
1325 or order, another state statute, federal statute, or federal regulation that governs disclosure of  
1326 the record, provided that the citations do not disclose private, controlled, or protected  
1327 information;

1328 (b) a description of the record or portions of the record to which access was ordered or  
1329 denied, provided that the description does not disclose private, controlled, or protected

1330 information or information exempt from disclosure under Subsection 63G-2-201(3)(b);

1331 (c) a statement that any party to the proceeding before the records committee may  
1332 appeal the records committee's decision to district court; and

1333 (d) a brief summary of the appeals process, the time limits for filing an appeal, and a  
1334 notice that in order to protect its rights on appeal, the party may wish to seek advice from an  
1335 attorney.

1336 (13) If the records committee fails to issue a decision within 57 calendar days of the  
1337 filing of the notice of appeal, that failure shall be considered the equivalent of an order denying  
1338 the appeal. The petitioner shall notify the records committee in writing if the petitioner  
1339 considers the appeal denied.

1340 (14) (a) Unless a notice of intent to appeal is filed under Subsection (14)(b), each party  
1341 to the proceeding shall comply with the order of the records committee.

1342 (b) If a party disagrees with the order of the records committee, that party may file a  
1343 notice of intent to appeal the order of the records committee.

1344 (c) If the records committee orders the governmental entity to produce a record and no  
1345 appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a  
1346 record, the governmental entity shall:

1347 (i) produce the record; and

1348 (ii) file a notice of compliance with the records committee.

1349 (d) (i) If the governmental entity that is ordered to produce a record fails to file a notice  
1350 of compliance or a notice of intent to appeal, the records committee may do either or both of  
1351 the following:

1352 (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or

1353 (B) send written notice of the governmental entity's noncompliance to:

1354 (I) the governor for executive branch entities;

1355 (II) the Legislative Management Committee for legislative branch entities; and

1356 (III) the Judicial Council for judicial branch agencies entities.

1357 (ii) In imposing a civil penalty, the records committee shall consider the gravity and  
1358 circumstances of the violation, including whether the failure to comply was due to neglect or  
1359 was willful or intentional.

1360 Section 14. Section **63G-2-404** is amended to read:

1361 **63G-2-404. Judicial review.**

1362 (1) (a) Any party to a proceeding before the records committee may petition for judicial  
1363 review by the district court of the records committee's order.

1364 (b) The petition shall be filed no later than 30 days after the date of the records  
1365 committee's order.

1366 (c) The records committee is a necessary party to the petition for judicial review.

1367 (d) The executive secretary of the records committee shall be served with notice of the  
1368 petition in accordance with the Utah Rules of Civil Procedure.

1369 (2) (a) A requester may petition for judicial review by the district court of a  
1370 governmental entity's determination as specified in Subsection 63G-2-402(1)(b).

1371 (b) The requester shall file a petition no later than:

1372 (i) 30 days after the governmental entity has responded to the records request by either  
1373 providing the requested records or denying the request in whole or in part;

1374 (ii) 35 days after the original request if the governmental entity failed to respond to the  
1375 request; or

1376 (iii) 45 days after the original request for records if:

1377 (A) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

1378 (B) the chief administrative officer failed to make a determination under Section  
1379 63G-2-401.

1380 (3) The petition for judicial review shall be a complaint governed by the Utah Rules of  
1381 Civil Procedure and shall contain:

1382 (a) the petitioner's name and mailing address;

1383 (b) a copy of the records committee order from which the appeal is taken, if the  
1384 petitioner brought a prior appeal to the records committee;

1385 (c) the name and mailing address of the governmental entity that issued the initial  
1386 determination with a copy of that determination;

1387 (d) a request for relief specifying the type and extent of relief requested; and

1388 (e) a statement of the reasons why the petitioner is entitled to relief.

1389 (4) If the appeal is based on the denial of access to a protected record, the court shall  
1390 allow the claimant of business confidentiality to provide to the court the reasons for the claim  
1391 of business confidentiality.

1392 (5) All additional pleadings and proceedings in the district court are governed by the  
1393 Utah Rules of Civil Procedure.

1394 (6) The district court may review the disputed records. The review shall be in camera.

1395 (7) The court shall:

1396 (a) make its decision de novo, but allow introduction of evidence presented to the  
1397 records committee;

1398 (b) determine all questions of fact and law without a jury; and

1399 (c) decide the issue at the earliest practical opportunity.

1400 (8) (a) ~~[The]~~ Except as provided in Section 63G-2-406, the court may, upon  
1401 consideration and weighing of the various interests and public policies pertinent to the  
1402 classification and disclosure or nondisclosure, order the disclosure of information properly  
1403 classified as private, controlled, or protected if the interest favoring access ~~[outweighs]~~ is  
1404 greater than or equal to the interest favoring restriction of access.

1405 (b) The court shall consider and, where appropriate, limit the requester's use and  
1406 further disclosure of the record in order to protect privacy interests in the case of private or  
1407 controlled records, business confidentiality interests in the case of records protected under  
1408 Subsections 63G-2-305(1) and (2), and privacy interests or the public interest in the case of  
1409 other protected records.

1410 Section 15. Section **63G-2-405** is amended to read:

1411 **63G-2-405. Confidential treatment of records for which no exemption applies.**

1412 (1) A court may, on appeal or in a declaratory or other action, order the confidential  
1413 treatment of records for which no exemption from disclosure applies if:

1414 (a) there are compelling interests favoring restriction of access to the record; and

1415 (b) the interests favoring restriction of access clearly ~~[outweigh]~~ are greater than or  
1416 equal to the interests favoring access.

1417 (2) If a governmental entity requests a court to restrict access to a record under this  
1418 section, the court shall require the governmental entity to pay the reasonable ~~[attorneys']~~  
1419 attorney fees incurred by the lead party in opposing the governmental entity's request, if:

1420 (a) the court finds that no statutory or constitutional exemption from disclosure could  
1421 reasonably apply to the record in question; and

1422 (b) the court denies confidential treatment under this section.

1423 (3) This section does not apply to records that are specifically required to be public  
1424 under statutory provisions outside of this chapter or under Section 63G-2-301, except as  
1425 provided in Subsection (4).

1426 (4) (a) Access to drafts and empirical data in drafts may be limited under this section,  
1427 but the court may consider, in its evaluation of interests favoring restriction of access, only  
1428 those interests that relate to the underlying information, and not to the deliberative nature of the  
1429 record.

1430 (b) Access to original data in a computer program may be limited under this section,  
1431 but the court may consider, in its evaluation of interests favoring restriction of access, only  
1432 those interests that relate to the underlying information, and not to the status of that data as part  
1433 of a computer program.

1434 Section 16. Section **63G-2-406** is enacted to read:

1435 **63G-2-406. Evidentiary standards for release of certain enforcement and**  
1436 **litigation records.**

1437 (1) A record that is classified as protected under Subsection 63G-2-305(9), (16), (17),  
1438 (22), (23), or (32) may be ordered to be disclosed under the provisions of Subsection  
1439 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404(8)(a) only if the person or party seeking  
1440 disclosure of the record has established, by a preponderance of the evidence, that the public  
1441 interest favoring access is equal to or greater than the interest favoring restriction of access.

1442 (2) A record that is classified as protected under Subsection 63G-2-305(10) may be  
1443 ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or  
1444 63G-2-404(8) only if the person or party seeking disclosure of the record has established, by  
1445 clear and convincing evidence, that the public interest favoring access is equal to or greater  
1446 than the interest favoring restriction of access.

1447 Section 17. Section **63G-2-801** is amended to read:

1448 **63G-2-801. Criminal penalties.**

1449 (1) (a) A public employee or other person who has lawful access to any private,  
1450 controlled, or protected record under this chapter, and who intentionally discloses, provides a  
1451 copy of, or improperly uses a private, controlled, or protected record knowing that the  
1452 disclosure or use is prohibited under this chapter, is guilty of a class B misdemeanor.

1453 (b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released

1454 private, controlled, or protected information in the reasonable belief that the use or disclosure  
1455 of the information was necessary to expose a violation of law involving government  
1456 corruption, abuse of office, or misappropriation of public funds or property.

1457 (c) It is a defense to prosecution under Subsection (1)(a) that the record could have  
1458 lawfully been released to the recipient if it had been properly classified.

1459 (d) It is a defense to prosecution under Subsection (1)(a) that the public employee or  
1460 other person disclosed, provided, or used the record based on a good faith belief that the  
1461 disclosure, provision, or use was in accordance with the law.

1462 (2) (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a  
1463 copy of any private, controlled, or protected record to which the person is not legally entitled is  
1464 guilty of a class B misdemeanor.

1465 (b) No person shall be guilty under Subsection (2)(a) who receives the record,  
1466 information, or copy after the fact and without prior knowledge of or participation in the false  
1467 pretenses, bribery, or theft.

1468 (3) (a) A public employee who intentionally refuses to release a record, the disclosure  
1469 of which the employee knows is required by law [~~or by final unappealed order from a~~  
1470 ~~governmental entity, the records committee, or a court~~], is guilty of a class B misdemeanor.

1471 (b) It is a defense to prosecution under Subsection (3)(a) that the public employee's  
1472 failure to release the record was based on a good faith belief that the public employee was  
1473 acting in accordance with the requirements of law.

1474 (c) A public employee who intentionally refuses to release a record, the disclosure of  
1475 which the employee knows is required by a final unappealed order from a government entity,  
1476 the records committee, or a court is guilty of a class B misdemeanor.

1477 Section 18. Section **78A-4-106** is amended to read:

1478 **78A-4-106. Appellate Mediation Office -- Protected records and information --**  
1479 **Governmental immunity.**

1480 (1) Unless a more restrictive rule of court is adopted pursuant to Subsection  
1481 63G-2-201(3)(b), information and records relating to any matter on appeal received or  
1482 generated by the Chief Appellate Mediator or other staff of the Appellate Mediation Office as a  
1483 result of any party's participation or lack of participation in the settlement program shall be  
1484 maintained as protected records pursuant to Subsections 63G-2-305(16), (17), ~~[(18);]~~ and



1485 [~~(33)~~] (32).

1486 (2) In addition to the access restrictions on protected records provided in Section  
1487 63G-2-202, the information and records may not be disclosed to judges, staff, or employees of  
1488 any court of this state.

1489 (3) The Chief Appellate Mediator may disclose statistical and other demographic  
1490 information as may be necessary and useful to report on the status and to allow supervision and  
1491 oversight of the Appellate Mediation Office.

1492 (4) When acting as mediators, the Chief Appellate Mediator and other professional  
1493 staff of the Appellate Mediation Office shall be immune from liability pursuant to Title 63G,  
1494 Chapter 7, Governmental Immunity Act of Utah.

1495 (5) Pursuant to Utah Constitution, Article VIII, Section 4, the Supreme Court may  
1496 exercise overall supervision of the Appellate Mediation Office as part of the appellate process.

---

---

**Legislative Review Note**  
as of 2-15-12 1:53 PM

**Office of Legislative Research and General Counsel**