

1 **EMERGENCY PERSONNEL RECORDING AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: A. Cory Maloy**

5 Senate Sponsor: Jacob L. Anderegg

6

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts a provision relating to audio recordings created by emergency first
10 responders.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ provides that a training audio recording made during an emergency event when an
14 emergency responder is treating or resuscitating an individual is a protected record
15 under the Government Records Access and Management Act.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **63G-2-305**, as last amended by Laws of Utah 2017, Chapters 374, 382, and 415

23

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

25 Section 1. Section **63G-2-305** is amended to read:

26 **63G-2-305. Protected records.**

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



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

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

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

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

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

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

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

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

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

54 (a) an invitation for bids;

55 (b) a request for proposals;

56 (c) a request for quotes;

57 (d) a grant; or

58 (e) other similar document;

59 (7) information submitted to or by a governmental entity in response to a request for
60 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict
61 the right of a person to have access to the information, after:

62 (a) a contract directly relating to the subject of the request for information has been
63 awarded and signed by all parties; or

64 (b) (i) a final determination is made not to enter into a contract that relates to the
65 subject of the request for information; and

66 (ii) at least two years have passed after the day on which the request for information is
67 issued;

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

71 (a) public interest in obtaining access to the information is greater than or equal to the
72 governmental entity's need to acquire the property on the best terms possible;

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

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

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

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

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

87 (a) the public interest in access is greater than or equal to the interests in restricting
88 access, including the governmental entity's interest in maximizing the financial benefit of the
89 transaction; or

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

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

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

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

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

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

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

109 (11) records the disclosure of which would jeopardize the life or safety of an
110 individual;

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

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

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

121 jurisdiction;

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

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

127 (17) records that are subject to the attorney client privilege;

128 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
129 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
130 quasi-judicial, or administrative proceeding;

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

133 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
134 legislative action or policy may not be classified as protected under this section; and

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

137 (A) members of a legislative body;

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

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

140 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
141 legislative action or policy may not be classified as protected under this section;

142 (20) (a) records in the custody or control of the Office of Legislative Research and
143 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
144 legislation or contemplated course of action before the legislator has elected to support the
145 legislation or course of action, or made the legislation or course of action public; and

146 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
147 Office of Legislative Research and General Counsel is a public document unless a legislator
148 asks that the records requesting the legislation be maintained as protected records until such
149 time as the legislator elects to make the legislation or course of action public;

150 (21) research requests from legislators to the Office of Legislative Research and
151 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared

152 in response to these requests;

153 (22) drafts, unless otherwise classified as public;

154 (23) records concerning a governmental entity's strategy about:

155 (a) collective bargaining; or

156 (b) imminent or pending litigation;

157 (24) records of investigations of loss occurrences and analyses of loss occurrences that
158 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
159 Uninsured Employers' Fund, or similar divisions in other governmental entities;

160 (25) records, other than personnel evaluations, that contain a personal recommendation
161 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
162 personal privacy, or disclosure is not in the public interest;

163 (26) records that reveal the location of historic, prehistoric, paleontological, or
164 biological resources that if known would jeopardize the security of those resources or of
165 valuable historic, scientific, educational, or cultural information;

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

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

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

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

181 (31) records provided by the United States or by a government entity outside the state
182 that are given to the governmental entity with a requirement that they be managed as protected

183 records if the providing entity certifies that the record would not be subject to public disclosure
184 if retained by it;

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

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

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

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

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

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

205 (a) the donor requests anonymity in writing;

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

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

213 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and

214 73-18-13;

215 (39) a notification of workers' compensation insurance coverage described in Section

216 34A-2-205;

217 (40) (a) the following records of an institution within the state system of higher

218 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,

219 or received by or on behalf of faculty, staff, employees, or students of the institution:

220 (i) unpublished lecture notes;

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

222 (A) relating to research; and

223 (B) of:

224 (I) the institution within the state system of higher education defined in Section

225 53B-1-102; or

226 (II) a sponsor of sponsored research;

227 (iii) unpublished manuscripts;

228 (iv) creative works in process;

229 (v) scholarly correspondence; and

230 (vi) confidential information contained in research proposals;

231 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public

232 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

233 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

234 (41) (a) records in the custody or control of the Office of Legislative Auditor General

235 that would reveal the name of a particular legislator who requests a legislative audit prior to the

236 date that audit is completed and made public; and

237 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the

238 Office of the Legislative Auditor General is a public document unless the legislator asks that

239 the records in the custody or control of the Office of Legislative Auditor General that would

240 reveal the name of a particular legislator who requests a legislative audit be maintained as

241 protected records until the audit is completed and made public;

242 (42) records that provide detail as to the location of an explosive, including a map or

243 other document that indicates the location of:

244 (a) a production facility; or

- 245 (b) a magazine;
- 246 (43) information:
- 247 (a) contained in the statewide database of the Division of Aging and Adult Services
- 248 created by Section [62A-3-311.1](#); or
- 249 (b) received or maintained in relation to the Identity Theft Reporting Information
- 250 System (IRIS) established under Section [67-5-22](#);
- 251 (44) information contained in the Management Information System and Licensing
- 252 Information System described in Title 62A, Chapter 4a, Child and Family Services;
- 253 (45) information regarding National Guard operations or activities in support of the
- 254 National Guard's federal mission;
- 255 (46) records provided by any pawn or secondhand business to a law enforcement
- 256 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
- 257 Secondhand Merchandise Transaction Information Act;
- 258 (47) information regarding food security, risk, and vulnerability assessments performed
- 259 by the Department of Agriculture and Food;
- 260 (48) except to the extent that the record is exempt from this chapter pursuant to Section
- 261 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or
- 262 prepared or maintained by the Division of Emergency Management, and the disclosure of
- 263 which would jeopardize:
- 264 (a) the safety of the general public; or
- 265 (b) the security of:
- 266 (i) governmental property;
- 267 (ii) governmental programs; or
- 268 (iii) the property of a private person who provides the Division of Emergency
- 269 Management information;
- 270 (49) records of the Department of Agriculture and Food that provides for the
- 271 identification, tracing, or control of livestock diseases, including any program established under
- 272 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control
- 273 of Animal Disease;
- 274 (50) as provided in Section [26-39-501](#):
- 275 (a) information or records held by the Department of Health related to a complaint

276 regarding a child care program or residential child care which the department is unable to
277 substantiate; and

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

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

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

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

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

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

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

291 (a) conducted within the state system of higher education, as defined in Section
292 53B-1-102; and

293 (b) conducted using animals;

294 (53) an initial proposal under Title 63N, Chapter 13, Part 2, Government Procurement
295 Private Proposal Program, to the extent not made public by rules made under that chapter;

296 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance
297 Evaluation Commission concerning an individual commissioner's vote on whether or not to
298 recommend that the voters retain a judge including information disclosed under Subsection
299 78A-12-203(5)(e);

300 (55) information collected and a report prepared by the Judicial Performance
301 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
302 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
303 the information or report;

304 (56) records contained in the Management Information System created in Section
305 62A-4a-1003;

306 (57) records provided or received by the Public Lands Policy Coordinating Office in

307 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;
308 (58) information requested by and provided to the 911 Division under Section
309 63H-7a-302;

310 (59) in accordance with Section 73-10-33:

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

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

315 (60) the following records in the custody or control of the Office of Inspector General
316 of Medicaid Services, created in Section 63A-13-201:

317 (a) records that would disclose information relating to allegations of personal
318 misconduct, gross mismanagement, or illegal activity of a person if the information or
319 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
320 through other documents or evidence, and the records relating to the allegation are not relied
321 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
322 report or final audit report;

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

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

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

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

336 (61) records that reveal methods used by the Office of Inspector General of Medicaid
337 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or

338 abuse;

339 (62) information provided to the Department of Health or the Division of Occupational
340 and Professional Licensing under Subsection 58-68-304(3) or (4);

341 (63) a record described in Section 63G-12-210;

342 (64) captured plate data that is obtained through an automatic license plate reader
343 system used by a governmental entity as authorized in Section 41-6a-2003;

344 (65) any record in the custody of the Utah Office for Victims of Crime relating to a
345 victim, including:

346 (a) a victim's application or request for benefits;

347 (b) a victim's receipt or denial of benefits; and

348 (c) any administrative notes or records made or created for the purpose of, or used to,
349 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim
350 Reparations Fund;

351 (66) an audio or video recording created by a body-worn camera, as that term is
352 defined in Section 77-7a-103, that records sound or images inside a hospital or health care
353 facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care
354 provider, as that term is defined in Section 78B-3-403, or inside a human service program as
355 that term is defined in Subsection 62A-2-101(19)(a)(vi), except for recordings that:

356 (a) depict the commission of an alleged crime;

357 (b) record any encounter between a law enforcement officer and a person that results in
358 death or bodily injury, or includes an instance when an officer fires a weapon;

359 (c) record any encounter that is the subject of a complaint or a legal proceeding against
360 a law enforcement officer or law enforcement agency;

361 (d) contain an officer involved critical incident as defined in Subsection
362 76-2-408(1)(d); or

363 (e) have been requested for reclassification as a public record by a subject or
364 authorized agent of a subject featured in the recording; ~~and~~

365 (67) a record pertaining to the search process for a president of an institution of higher
366 education described in Section 53B-2-102, except for application materials for a publicly
367 announced finalist[-]; and

368 (68) an audio recording that is:

369 (a) produced by an audio recording device that is used in conjunction with a device or
370 piece of equipment designed or intended for resuscitating an individual or for treating an
371 individual with a life-threatening condition;

372 (b) produced during an emergency event when an individual employed to provide law
373 enforcement, fire protection, paramedic, emergency medical, or other first responder service:

374 (i) is responding to an individual needing resuscitation or with a life-threatening
375 condition; and

376 (ii) uses a device or piece of equipment designed or intended for resuscitating an
377 individual or for treating an individual with a life-threatening condition; and

378 (c) intended and used for purposes of training emergency responders how to improve
379 their response to an emergency situation.

Legislative Review Note
Office of Legislative Research and General Counsel