

1                   **AMENDMENTS RELATING TO GOVERNMENT RECORDS**

2   2018 GENERAL SESSION

3   STATE OF UTAH

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

5                                   House Sponsor: Keven J. Stratton

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7 **LONG TITLE**

8 **General Description:**

9           This bill modifies provisions relating to government records.

10 **Highlighted Provisions:**

11           This bill:

- 12           ▶ modifies provisions relating to the protected status of records of closed meetings;
- 13           ▶ provides a standard for the disclosure of certain protected records;
- 14           ▶ modifies provisions relating to the posting of documents to the Utah Public Notice

15 Website;

- 16           ▶ modifies a provision relating to appeals of records requests; and
- 17           ▶ makes related technical and conforming changes.

18 **Money Appropriated in this Bill:**

19           None

20 **Other Special Clauses:**

21           None

22 **Utah Code Sections Affected:**

23 AMENDS:

24           **52-4-203**, as last amended by Laws of Utah 2017, Chapters 12 and 13

25           **52-4-206**, as last amended by Laws of Utah 2010, Chapter 239

26           **52-4-304**, as last amended by Laws of Utah 2008, Chapter 382

27           **63G-2-305**, as last amended by Laws of Utah 2017, Chapters 374, 382, and 415



28 **63G-2-403**, as last amended by Laws of Utah 2015, Chapter 335

29 **63G-2-406**, as last amended by Laws of Utah 2013, Chapter 445

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

32 Section 1. Section **52-4-203** is amended to read:

33 **52-4-203. Written minutes of open meetings -- Public records -- Recording of**  
34 **meetings.**

35 (1) Except as provided under Subsection (7), written minutes and a recording shall be  
36 kept of all open meetings.

37 (2) (a) Written minutes of an open meeting shall include:

38 (i) the date, time, and place of the meeting;

39 (ii) the names of members present and absent;

40 (iii) the substance of all matters proposed, discussed, or decided by the public body  
41 which may include a summary of comments made by members of the public body;

42 (iv) a record, by individual member, of each vote taken by the public body;

43 (v) the name of each person who:

44 (A) is not a member of the public body; and

45 (B) after being recognized by the presiding member of the public body, provided  
46 testimony or comments to the public body;

47 (vi) the substance, in brief, of the testimony or comments provided by the public under  
48 Subsection (2)(a)(v); and

49 (vii) any other information that is a record of the proceedings of the meeting that any  
50 member requests be entered in the minutes or recording.

51 (b) A public body may satisfy the requirement under Subsection (2)(a)(iii) or (vi) that  
52 minutes include the substance of matters proposed, discussed, or decided or the substance of  
53 testimony or comments by maintaining a publicly available online version of the minutes that  
54 provides a link to the meeting recording at the place in the recording where the matter is  
55 proposed, discussed, or decided or the testimony or comments provided.

56 (3) A recording of an open meeting shall:

57 (a) be a complete and unedited record of all open portions of the meeting from the  
58 commencement of the meeting through adjournment of the meeting; and

59 (b) be properly labeled or identified with the date, time, and place of the meeting.

60 (4) (a) As used in this Subsection (4):

61 (i) "Approved minutes" means written minutes:

62 (A) of an open meeting; and

63 (B) that have been approved by the public body that held the open meeting.

64 (ii) "Electronic information" means information presented or provided in an electronic  
65 format.

66 (iii) "Pending minutes" means written minutes:

67 (A) of an open meeting; and

68 (B) that have been prepared in draft form and are subject to change before being  
69 approved by the public body that held the open meeting.

70 (iv) "Specified local public body" means a legislative body of a county, city, town, or  
71 metro township.

72 (v) "State public body" means a public body that is an administrative, advisory,  
73 executive, or legislative body of the state.

74 (vi) [~~"Website"~~] "State website" means the Utah Public Notice Website created under  
75 Section 63F-1-701.

76 (b) Pending minutes, approved minutes, and a recording of a public meeting are public  
77 records under Title 63G, Chapter 2, Government Records Access and Management Act.

78 (c) Pending minutes shall contain a clear indication that the public body has not yet  
79 approved the minutes or that the minutes are subject to change until the public body approves  
80 them.

81 (d) A state public body and a specified local public body shall require an individual  
82 who, at an open meeting of the public body, publicly presents or provides electronic  
83 information, relating to an item on the public body's meeting agenda, to provide the public  
84 body, at the time of the meeting, an electronic or hard copy of the electronic information for  
85 inclusion in the public record.

86 (e) A state public body shall:

87 (i) make pending minutes available to the public within 30 days after holding the open  
88 meeting that is the subject of the pending minutes;

89 (ii) within three business days after approving written minutes of an open meeting:

90 (A) post to the state website a copy of the approved minutes and any public materials  
91 distributed at the meeting;

92 (B) make the approved minutes and public materials available to the public at the  
93 public body's primary office; and

94 (C) if the public body provides online minutes under Subsection (2)(b), post approved  
95 minutes that comply with Subsection (2)(b) and the public materials on the public body's  
96 website; and

97 (iii) within three business days after holding an open meeting, post on the state website  
98 an audio recording of the open meeting, or a link to the recording.

99 (f) A specified local public body shall:

100 (i) make pending minutes available to the public within 30 days after holding the open  
101 meeting that is the subject of the pending minutes;

102 (ii) within three business days after approving written minutes of an open meeting, post  
103 and make available a copy of the approved minutes and any public materials distributed at the  
104 meeting, as provided in Subsection (4)(e)(ii); and

105 (iii) within three business days after holding an open meeting, make an audio recording  
106 of the open meeting available to the public for listening.

107 (g) A public body that is not a state public body or a specified local public body shall:

108 (i) make pending minutes available to the public within a reasonable time after holding  
109 the open meeting that is the subject of the pending minutes;

110 (ii) within three business days after approving written minutes, make the approved  
111 minutes available to the public; and

112 (iii) within three business days after holding an open meeting, make an audio recording  
113 of the open meeting available to the public for listening.

114 (h) A public body shall establish and implement procedures for the public body's  
115 approval of the written minutes of each meeting.

116 (i) Approved minutes of an open meeting are the official record of the meeting.

117 (5) All or any part of an open meeting may be independently recorded by any person in  
118 attendance if the recording does not interfere with the conduct of the meeting.

119 (6) The written minutes or recording of an open meeting that are required to be  
120 retained permanently shall be maintained in or converted to a format that meets long-term

121 records storage requirements.

122 (7) Notwithstanding Subsection (1), a recording is not required to be kept of:

123 (a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken  
124 by the public body; or

125 (b) an open meeting of a local district under Title 17B, Limited Purpose Local  
126 Government Entities - Local Districts, or special service district under Title 17D, Chapter 1,  
127 Special Service District Act, if the district's annual budgeted expenditures for all funds,  
128 excluding capital expenditures and debt service, are \$50,000 or less.

129 Section 2. Section **52-4-206** is amended to read:

130 **52-4-206. Record of closed meetings.**

131 (1) Except as provided under Subsection (6), if a public body closes a meeting under  
132 Subsection [52-4-205](#)(1), the public body:

133 (a) shall make a recording of the closed portion of the meeting; and

134 (b) may keep detailed written minutes that disclose the content of the closed portion of  
135 the meeting.

136 (2) A recording of a closed meeting shall be complete and unedited from the  
137 commencement of the closed meeting through adjournment of the closed meeting.

138 (3) The recording and any minutes of a closed meeting shall include:

139 (a) the date, time, and place of the meeting;

140 (b) the names of members present and absent; and

141 (c) the names of all others present except where the disclosure would infringe on the  
142 confidentiality necessary to fulfill the original purpose of closing the meeting.

143 (4) Minutes or recordings of a closed meeting that are required to be retained  
144 permanently shall be maintained in or converted to a format that meets long-term records  
145 storage requirements.

146 ~~[(5) Both a recording and written minutes of closed meetings are protected records~~  
147 ~~under Title 63G, Chapter 2, Government Records Access and Management Act, except that the~~  
148 ~~records may be disclosed under a court order only as provided under Section [52-4-304](#).]~~

149 (5) Transcripts, minutes, recordings, and reports of a closed meeting are protected  
150 records as provided in Subsection [63G-2-305](#)(32) and may be disclosed only as provided in  
151 Subsection [63G-2-406](#)(3).

152 (6) If a public body closes a meeting exclusively for the purposes described under  
153 Subsection 52-4-205(1)(a), (1)(f), or (2):

154 (a) the person presiding shall sign a sworn statement affirming that the sole purpose for  
155 closing the meeting was to discuss the purposes described under Subsection  
156 52-4-205(1)(a),(1)(f), or (2); and

157 (b) the provisions of Subsection (1) of this section do not apply.

158 Section 3. Section 52-4-304 is amended to read:

159 **52-4-304. Action challenging closed meeting.**

160 (1) Notwithstanding the procedure established under Subsection 63G-2-202(7), in any  
161 action brought under the authority of this chapter to challenge the legality of a closed meeting  
162 held by a public body, the court shall:

163 (a) review the recording or written minutes of the closed meeting in camera; and

164 (b) decide the legality of the closed meeting.

165 (2) (a) If the judge determines that the public body did not violate Section 52-4-204,  
166 52-4-205, or 52-4-206 regarding closed meetings, the judge shall dismiss the case without  
167 disclosing or revealing any information from the recording or minutes of the closed meeting,  
168 except to the extent the judge orders disclosure of information under Subsection 63G-2-406(3).

169 (b) If the judge determines that the public body violated Section 52-4-204, 52-4-205, or  
170 52-4-206 regarding closed meetings, the judge shall publicly disclose or reveal from the  
171 recording or minutes of the closed meeting all information about the portion of the meeting that  
172 was illegally closed.

173 Section 4. Section 63G-2-305 is amended to read:

174 **63G-2-305. Protected records.**

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

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

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

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

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

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

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

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

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

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

202 (a) an invitation for bids;

203 (b) a request for proposals;

204 (c) a request for quotes;

205 (d) a grant; or

206 (e) other similar document;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

244 (a) reasonably could be expected to interfere with investigations undertaken for



245 enforcement, discipline, licensing, certification, or registration purposes;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

285 (A) members of a legislative body;

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

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

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

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

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

298 (21) research requests from legislators to the Office of Legislative Research and  
299 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
300 in response to these requests;

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

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

303 (a) collective bargaining; or

304 (b) imminent or pending litigation;

305 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
306 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the

307 Uninsured Employers' Fund, or similar divisions in other governmental entities;  
308 (25) records, other than personnel evaluations, that contain a personal recommendation  
309 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
310 personal privacy, or disclosure is not in the public interest;  
311 (26) records that reveal the location of historic, prehistoric, paleontological, or  
312 biological resources that if known would jeopardize the security of those resources or of  
313 valuable historic, scientific, educational, or cultural information;  
314 (27) records of independent state agencies if the disclosure of the records would  
315 conflict with the fiduciary obligations of the agency;  
316 (28) records of an institution within the state system of higher education defined in  
317 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,  
318 retention decisions, and promotions, which could be properly discussed in a meeting closed in  
319 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of  
320 the final decisions about tenure, appointments, retention, promotions, or those students  
321 admitted, may not be classified as protected under this section;  
322 (29) records of the governor's office, including budget recommendations, legislative  
323 proposals, and policy statements, that if disclosed would reveal the governor's contemplated  
324 policies or contemplated courses of action before the governor has implemented or rejected  
325 those policies or courses of action or made them public;  
326 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,  
327 revenue estimates, and fiscal notes of proposed legislation before issuance of the final  
328 recommendations in these areas;  
329 (31) records provided by the United States or by a government entity outside the state  
330 that are given to the governmental entity with a requirement that they be managed as protected  
331 records if the providing entity certifies that the record would not be subject to public disclosure  
332 if retained by it;  
333 (32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a  
334 public body [~~except as provided in Section 52-4-206~~];  
335 (33) records that would reveal the contents of settlement negotiations but not including  
336 final settlements or empirical data to the extent that they are not otherwise exempt from  
337 disclosure;

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

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

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

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

353 (a) the donor requests anonymity in writing;

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

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

361 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
362 73-18-13;

363 (39) a notification of workers' compensation insurance coverage described in Section  
364 34A-2-205;

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

368 (i) unpublished lecture notes;

- 369 (ii) unpublished notes, data, and information:  
370 (A) relating to research; and  
371 (B) of:  
372 (I) the institution within the state system of higher education defined in Section  
373 [53B-1-102](#); or  
374 (II) a sponsor of sponsored research;  
375 (iii) unpublished manuscripts;  
376 (iv) creative works in process;  
377 (v) scholarly correspondence; and  
378 (vi) confidential information contained in research proposals;  
379 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public  
380 information required pursuant to Subsection [53B-16-302](#)(2)(a) or (b); and  
381 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;  
382 (41) (a) records in the custody or control of the Office of Legislative Auditor General  
383 that would reveal the name of a particular legislator who requests a legislative audit prior to the  
384 date that audit is completed and made public; and  
385 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the  
386 Office of the Legislative Auditor General is a public document unless the legislator asks that  
387 the records in the custody or control of the Office of Legislative Auditor General that would  
388 reveal the name of a particular legislator who requests a legislative audit be maintained as  
389 protected records until the audit is completed and made public;  
390 (42) records that provide detail as to the location of an explosive, including a map or  
391 other document that indicates the location of:  
392 (a) a production facility; or  
393 (b) a magazine;  
394 (43) information:  
395 (a) contained in the statewide database of the Division of Aging and Adult Services  
396 created by Section [62A-3-311.1](#); or  
397 (b) received or maintained in relation to the Identity Theft Reporting Information  
398 System (IRIS) established under Section [67-5-22](#);  
399 (44) information contained in the Management Information System and Licensing

400 Information System described in Title 62A, Chapter 4a, Child and Family Services;  
401 (45) information regarding National Guard operations or activities in support of the  
402 National Guard's federal mission;  
403 (46) records provided by any pawn or secondhand business to a law enforcement  
404 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and  
405 Secondhand Merchandise Transaction Information Act;  
406 (47) information regarding food security, risk, and vulnerability assessments performed  
407 by the Department of Agriculture and Food;  
408 (48) except to the extent that the record is exempt from this chapter pursuant to Section  
409 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or  
410 prepared or maintained by the Division of Emergency Management, and the disclosure of  
411 which would jeopardize:  
412 (a) the safety of the general public; or  
413 (b) the security of:  
414 (i) governmental property;  
415 (ii) governmental programs; or  
416 (iii) the property of a private person who provides the Division of Emergency  
417 Management information;  
418 (49) records of the Department of Agriculture and Food that provides for the  
419 identification, tracing, or control of livestock diseases, including any program established under  
420 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control  
421 of Animal Disease;  
422 (50) as provided in Section 26-39-501:  
423 (a) information or records held by the Department of Health related to a complaint  
424 regarding a child care program or residential child care which the department is unable to  
425 substantiate; and  
426 (b) information or records related to a complaint received by the Department of Health  
427 from an anonymous complainant regarding a child care program or residential child care;  
428 (51) unless otherwise classified as public under Section 63G-2-301 and except as  
429 provided under Section 41-1a-116, an individual's home address, home telephone number, or  
430 personal mobile phone number, if:

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

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

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

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

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

439 (a) conducted within the state system of higher education, as defined in Section  
440 [53B-1-102](#); and

441 (b) conducted using animals;

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

444 (54) in accordance with Section [78A-12-203](#), any record of the Judicial Performance  
445 Evaluation Commission concerning an individual commissioner's vote on whether or not to  
446 recommend that the voters retain a judge including information disclosed under Subsection  
447 [78A-12-203\(5\)\(e\)](#);

448 (55) information collected and a report prepared by the Judicial Performance  
449 Evaluation Commission concerning a judge, unless Section [20A-7-702](#) or Title 78A, Chapter  
450 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,  
451 the information or report;

452 (56) records contained in the Management Information System created in Section  
453 [62A-4a-1003](#);

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

456 (58) information requested by and provided to the 911 Division under Section  
457 [63H-7a-302](#);

458 (59) in accordance with Section [73-10-33](#):

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

461 (b) an outline of an emergency response plan in possession of the state or a county or

462 municipality;

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

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

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

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

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

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

484 (61) records that reveal methods used by the Office of Inspector General of Medicaid  
485 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or  
486 abuse;

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

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

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

492 (65) any record in the custody of the Utah Office for Victims of Crime relating to a



493 victim, including:

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

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

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

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

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

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

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

509 (d) contain an officer involved critical incident as defined in Subsection  
510 76-2-408(1)(d); or

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

513 (67) a record pertaining to the search process for a president of an institution of higher  
514 education described in Section 53B-2-102, except for application materials for a publicly  
515 announced finalist.

516 Section 5. Section 63G-2-403 is amended to read:

517 **63G-2-403. Appeals to the records committee.**

518 (1) (a) A records committee appellant appeals to the records committee by filing a  
519 notice of appeal with the executive secretary of the records committee no later than 30 days  
520 after the date of issuance of the decision being appealed.

521 (b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the  
522 executive secretary of the records committee no later than 45 days after the day on which the  
523 record request is made if:

524 (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and  
525 (ii) the chief administrative officer fails to make a decision under Section 63G-2-401.  
526 (2) The notice of appeal shall:  
527 (a) contain the name, mailing address, and daytime telephone number of the records  
528 committee appellant;  
529 (b) be accompanied by a copy of the decision being appealed; and  
530 (c) state the relief sought.  
531 (3) The records committee appellant:  
532 (a) shall, on the day on which the notice of appeal is filed with the records committee,  
533 serve a copy of the notice of appeal on:  
534 (i) the governmental entity whose access denial is the subject of the appeal, if the  
535 records committee appellant is a requester or interested party; or  
536 (ii) the requester or interested party who is a party to the local appeals board  
537 proceeding that resulted in the decision that the political subdivision is appealing to the records  
538 committee, if the records committee appellant is a political subdivision; and  
539 (b) may file a short statement of facts, reasons, and legal authority in support of the  
540 appeal.  
541 (4) (a) Except as provided in Subsections (4)(b) and (c), no later than seven business  
542 days after receiving a notice of appeal, the executive secretary of the records committee shall:  
543 (i) schedule a hearing for the records committee to discuss the appeal at the next  
544 regularly scheduled committee meeting falling at least 16 days after the date the notice of  
545 appeal is filed but no longer than 64 calendar days after the date the notice of appeal was filed  
546 except that the records committee may schedule an expedited hearing upon application of the  
547 records committee appellant and good cause shown;  
548 (ii) send a copy of the notice of hearing to the records committee appellant; and  
549 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing  
550 to:  
551 (A) each member of the records committee;  
552 (B) the records officer and the chief administrative officer of the governmental entity  
553 whose access denial is the subject of the appeal, if the records committee appellant is a  
554 requester or interested party;

555 (C) any person who made a business confidentiality claim under Section 63G-2-309 for  
556 a record that is the subject of the appeal; and

557 (D) all persons who participated in the proceedings before the governmental entity's  
558 chief administrative officer, if the appeal is of the chief administrative officer's decision  
559 affirming an access denial.

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

564 (ii) (A) If the executive secretary of the records committee declines to schedule a  
565 hearing, the executive secretary of the records committee shall send a notice to the records  
566 committee appellant indicating that the request for hearing has been denied and the reason for  
567 the denial.

568 (B) The committee shall make rules to implement this section as provided by Title  
569 63G, Chapter 3, Utah Administrative Rulemaking Act.

570 (c) The executive secretary of the records committee may schedule a hearing on an  
571 appeal to the records committee at a regularly scheduled records committee meeting that is  
572 later than the period described in Subsection (4)(a)(i) if that records committee meeting is the  
573 first regularly scheduled records committee meeting at which there are fewer than 10 appeals  
574 scheduled to be heard.

575 (5) (a) No later than five business days before the hearing, a governmental entity shall  
576 submit to the executive secretary of the records committee a written statement of facts, reasons,  
577 and legal authority in support of the governmental entity's position.

578 (b) The governmental entity shall send a copy of the written statement by first class  
579 mail, postage prepaid, to the requester or interested party involved in the appeal. The executive  
580 secretary shall forward a copy of the written statement to each member of the records  
581 committee.

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

585 (b) Any written statement of facts, reasons, and legal authority in support of the

586 intervener's position shall be filed with the request for intervention.

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

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

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

594 (9) (a) (i) The records committee:

595 (A) may review the disputed records; and

596 (B) shall review the disputed records, if the committee is weighing the various interests  
597 under Subsection (11).

598 (ii) A review of the disputed records under Subsection (9)(a)(i) shall be in camera.

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

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

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

607 (c) (i) The records committee's review shall be de novo, if the appeal is an appeal from  
608 a decision of a chief administrative officer:

609 (A) issued under Section [63G-2-401](#); or

610 (B) issued by a chief administrative officer of a political subdivision that has not  
611 established a local appeals board.

612 (ii) For an appeal from a decision of a local appeals board, the records committee shall  
613 review and consider the decision of the local appeals board.

614 (11) (a) No later than seven business days after the hearing, the records committee shall  
615 issue a signed order:

616 (i) granting the relief sought, in whole or in part; or

617 (ii) upholding the governmental entity's access denial, in whole or in part.

618 (b) Except as provided in Section 63G-2-406, the records committee may, upon  
619 consideration and weighing of the various interests and public policies pertinent to the  
620 classification and disclosure or nondisclosure, order the disclosure of information properly  
621 classified as private, controlled, or protected if the public interest favoring access is greater  
622 than or equal to the interest favoring restriction of access.

623 (c) In making a determination under Subsection (11)(b), the records committee shall  
624 consider and, where appropriate, limit the requester's or interested party's use and further  
625 disclosure of the record in order to protect:

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

627 (ii) business confidentiality interests in the case of a record protected under Subsection  
628 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

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

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

634 (b) a description of the record or portions of the record to which access was ordered or  
635 denied, if the description does not disclose private, controlled, or protected information or  
636 information exempt from disclosure under Subsection 63G-2-201(3)(b);

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

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

642 (13) If the records committee fails to issue a decision within 73 calendar days of the  
643 filing of the notice of appeal, that failure is the equivalent of an order denying the appeal. A  
644 records committee appellant shall notify the records committee in writing if the records  
645 committee appellant considers the appeal denied.

646 (14) A party to a proceeding before the records committee may seek judicial review in  
647 district court of a records committee order by filing a petition for review of the records

648 committee order as provided in Section 63G-2-404.

649 (15) (a) Unless a notice of intent to appeal is filed under Subsection (15)(b), each party  
650 to the proceeding shall comply with the order of the records committee.

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

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

656 (i) produce the record; and

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

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

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

662 (B) send written notice of the governmental entity's noncompliance to[:] the governor.

663 [~~(F) the governor for executive branch entities;~~]

664 [~~(H) the Legislative Management Committee for legislative branch entities; and~~]

665 [~~(HH) the Judicial Council for judicial branch agencies entities.~~]

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

669 Section 6. Section 63G-2-406 is amended to read:

670 **63G-2-406. Evidentiary standards for release of certain records.**

671 (1) A record that is classified as protected under Subsection 63G-2-305(10), (17), (18),  
672 (23), (24), or (33) may be ordered to be disclosed under the provisions of Subsection  
673 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404(7)(a) only if the person or party seeking  
674 disclosure of the record has established, by a preponderance of the evidence, that the public  
675 interest favoring access is equal to or greater than the interest favoring restriction of access.

676 (2) A record that is classified as protected under Subsection 63G-2-305(11) may be  
677 ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or  
678 63G-2-404(7) only if the person or party seeking disclosure of the record has established, by

679 clear and convincing evidence, that the public interest favoring access is equal to or greater  
680 than the interest favoring restriction of access.

681 (3) A record classified as protected under Subsection 63G-2-305(32) may not be  
682 disclosed unless the person seeking disclosure establishes clearly and convincingly that the  
683 public interest favoring disclosure substantially outweighs the interests favoring restriction of  
684 access.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**