

**MODIFICATIONS TO GOVERNMENT RECORDS**

**PROVISIONS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

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

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ modifies the right to inspect and copy records;
  - ▶ modifies a provision that states that a governmental entity is not required to fill a records request if the records are already publicly available;
  - ▶ prohibits a records request from being submitted to multiple governmental entities;
- and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 63G-2-201**, as last amended by Laws of Utah 2017, Chapter 435
- 63G-2-204**, as last amended by Laws of Utah 2017, Chapter 435
- 63G-2-308**, as renumbered and amended by Laws of Utah 2008, Chapter 382



28 **63G-2-400.5**, as enacted by Laws of Utah 2015, Chapter 335

29 **63G-2-401**, as last amended by Laws of Utah 2017, Chapter 435

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

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

33 **63G-2-201. Right to inspect records and receive copies of records.**

34 (1) (a) [Every] Except as provided in Subsection (1)(b), a person has the right to  
35 inspect a public record free of charge, and the right to take a copy of a public record during  
36 normal working hours, subject to Sections **63G-2-203** and **63G-2-204**.

37 (b) A right under Subsection (1)(a) does not apply with respect to a record:

38 (i) a copy of which the governmental entity has already provided to the person;

39 (ii) that is the subject of a records request that the governmental entity is not required  
40 to fill under Subsection (8)(e); or

41 (iii) (A) that is accessible only by a computer or other electronic device owned or  
42 controlled by the governmental entity;

43 (B) that is part of an electronic file that also contains a record that is private,  
44 controlled, or protected; and

45 (C) that the governmental entity cannot readily separate from the part of the electronic  
46 file that contains a private, controlled, or protected record.

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

48 (3) The following records are not public:

49 (a) a record that is private, controlled, or protected under Sections **63G-2-302**,  
50 **63G-2-303**, **63G-2-304**, and **63G-2-305**; and

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

55 (4) Only a record specified in Section **63G-2-302**, **63G-2-303**, **63G-2-304**, or  
56 **63G-2-305** may be classified private, controlled, or protected.

57 (5) (a) A governmental entity may not disclose a record that is private, controlled, or  
58 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section

59 63G-2-202, 63G-2-206, or 63G-2-303.

60 (b) A governmental entity may disclose a record that is private under Subsection  
61 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in  
62 Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee,  
63 determines that:

64 (i) there is no interest in restricting access to the record; or  
65 (ii) the interests favoring access are greater than or equal to the interest favoring  
66 restriction of access.

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

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

70 (A) is mutually beneficial to:

71 (I) the subject of the record;

72 (II) the governmental entity; and

73 (III) the public; and

74 (B) serves a public purpose related to:

75 (I) public safety; or

76 (II) consumer protection; and

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

79 (6) (a) The disclosure of a record to which access is governed or limited pursuant to  
80 court rule, another state statute, federal statute, or federal regulation, including a record for  
81 which access is governed or limited as a condition of participation in a state or federal program  
82 or for receiving state or federal funds, is governed by the specific provisions of that statute,  
83 rule, or regulation.

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

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

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

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

89 (c) the person pays the lawful fees.

90 (8) ~~(a)~~ In response to a request, a governmental entity is not required to:  
 91 ~~(i)~~ (a) create a record;  
 92 ~~(ii)~~ (b) compile, format, manipulate, package, summarize, or tailor information;  
 93 ~~(iii)~~ (c) provide a record in a particular format, medium, or program not currently  
 94 maintained by the governmental entity;  
 95 ~~(iv)~~ (d) fulfill a person's records request if the request unreasonably duplicates prior  
 96 records requests from that person; or

97 ~~(v)~~ (e) fill a person's records request if:

98 ~~(A)~~ (i) the record requested is:

99 (A) publicly accessible ~~[in the identical physical form and content]~~ online; or

100 (B) included in a public publication or product produced by the governmental entity  
 101 receiving the request; and

102 ~~(B)~~ (ii) the governmental entity:

103 (A) specifies to the person requesting the record where the record is accessible online;

104 or

105 (B) provides the person requesting the record with the public publication or product[;]  
 106 and ~~[(C) the governmental entity]~~ specifies where the record can be found in the public  
 107 publication or product.

108 ~~[(b) Upon request,]~~

109 (9) (a) Although not required to do so, a governmental entity may, upon request from  
 110 the person who submitted the records request, compile, format, manipulate, package,  
 111 summarize, or tailor information or provide a record in a [particular form under Subsection  
 112 (8)(a)(ii) or (iii) if:] format, medium, or program not currently maintained by the governmental  
 113 entity.

114 ~~[(i) the]~~ (b) In determining whether to fulfill a request described in Subsection (9)(a), a  
 115 governmental entity [determines it is able to do so] may consider whether the governmental  
 116 entity is able to fulfill the request without unreasonably interfering with the governmental  
 117 entity's duties and responsibilities[; and].

118 ~~[(ii) the requester agrees]~~

119 (c) A governmental entity may require a person who makes a request under Subsection  
 120 (9)(a) to pay the governmental entity, in accordance with Section [63G-2-203](#), for providing the

121 information or record [~~in the requested form in accordance with Section 63G-2-203~~] as  
122 requested.

123 [~~(9)~~] (10) (a) Notwithstanding any other provision of this chapter, and subject to  
124 Subsection [~~(9)~~] (10)(b), a governmental entity is not required to respond to, or provide a  
125 record in response to, a record request if the request is submitted by or in behalf of an  
126 individual who is confined in a jail or other correctional facility following the individual's  
127 conviction.

128 (b) Subsection [~~(9)~~] (10)(a) does not apply to:

129 (i) the first five record requests submitted to the governmental entity by or in behalf of  
130 an individual described in Subsection [~~(9)~~] (10)(a) during any calendar year requesting only a  
131 record that contains a specific reference to the individual; or

132 (ii) a record request that is submitted by an attorney of an individual described in  
133 Subsection [~~(9)~~] (10)(a).

134 [~~(10)~~] (11) (a) A governmental entity may allow a person requesting more than 50  
135 pages of records to copy the records if:

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

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

141 (b) If the requirements of Subsection [~~(10)~~] (11)(a) are met, the governmental entity  
142 may:

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

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

148 [~~(H)~~] (12) (a) A governmental entity that owns an intellectual property right and that  
149 offers the intellectual property right for sale or license may control by ordinance or policy the  
150 duplication and distribution of the material based on terms the governmental entity considers to  
151 be in the public interest.

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

155 [~~(12)~~] (13) A governmental entity may not use the physical form, electronic or  
156 otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to  
157 inspect and receive a copy of a record under this chapter.

158 [~~(13)~~] (14) Subject to the requirements of Subsection (8), a governmental entity shall  
159 provide access to an electronic copy of a record in lieu of providing access to its paper  
160 equivalent if:

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

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

164 (c) the electronic copy of the record:

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

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

168 [~~(14)~~] (15) In determining whether a record is properly classified as private under  
169 Subsection 63G-2-302(2)(d), the governmental entity, State Records Committee, local appeals  
170 board, or court shall consider and weigh:

171 (a) any personal privacy interests, including those in images, that would be affected by  
172 disclosure of the records in question; and

173 (b) any public interests served by disclosure.

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

175 **63G-2-204. Requests -- Time limit for response and extraordinary circumstances.**

176 (1) (a) A person making a request for a record shall [~~furnish~~] submit to the  
177 governmental entity [~~with~~] that possesses the record a written request containing:

178 [~~(a)~~] (i) the person's:

179 (A) name[;];

180 (B) mailing address[;];

181 (C) email address, if the person has an email address and is willing to accept

182 communications by email relating to the person's records request; and

183 (D) daytime telephone number~~[-if available]~~; and  
 184 ~~[(b)]~~ (ii) a description of the record requested that identifies the record with reasonable  
 185 specificity.

186 ~~[(2) (a)]~~ Subject to Subsection ~~(2)(b)~~, a person making a request for a record shall  
 187 submit the request to the governmental entity that prepares, owns, or retains the record.]

188 (b) (i) A single record request may not be submitted to multiple governmental entities.

189 (ii) Subsection (1)(b)(i) may not be construed to prevent a person from submitting a  
 190 separate record request to each of multiple governmental entities, even if each of the separate  
 191 requests seeks access to the same record.

192 ~~[(b)]~~ (2) (a) In response to a request for a record, a governmental entity may not  
 193 provide a record that it has received under Section 63G-2-206 as a shared record if:

194 (i) the record was shared for the purpose of auditing~~[-if]~~; and

195 (ii) the governmental entity is authorized by state statute to conduct an audit.

196 ~~[(c)]~~ (b) If a governmental entity is prohibited from providing a record under  
 197 Subsection ~~[(2)(b), it]~~ (2)(a), the governmental entity shall:

198 (i) deny the records request; and

199 (ii) inform the person making the request ~~[that records requests must be submitted to~~  
 200 ~~the governmental entity that prepares, owns, or retains the record]~~ of the identity of the  
 201 governmental entity from which the shared record was received.

202 ~~[(d)]~~ (3) A governmental entity may make rules in accordance with Title 63G, Chapter  
 203 3, Utah Administrative Rulemaking Act, specifying where and to whom requests for access  
 204 shall be directed.

205 ~~[(3)]~~ (4) After receiving a request for a record, a governmental entity shall:

206 (a) review each request that seeks an expedited response and notify, within five  
 207 business days after receiving the request, each requester that has not demonstrated that their  
 208 record request benefits the public rather than the person that their response will not be  
 209 expedited; and

210 (b) as soon as reasonably possible, but no later than 10 business days after receiving a  
 211 written request, or five business days after receiving a written request if the requester  
 212 demonstrates that expedited response to the record request benefits the public rather than the  
 213 person:

- 214 (i) approve the request and provide a copy of the record;
- 215 (ii) deny the request in accordance with the procedures and requirements of Section
- 216 [63G-2-205](#);
- 217 (iii) notify the requester that it does not maintain the record requested and provide, if
- 218 known, the name and address of the governmental entity that does maintain the record; or
- 219 (iv) notify the requester that because of one of the extraordinary circumstances listed in
- 220 Subsection [~~(5)~~] (6), it cannot immediately approve or deny the request, and include with the
- 221 notice:
  - 222 (A) a description of the circumstances that constitute the extraordinary circumstances;
  - 223 and
  - 224 (B) the date when the records will be available, consistent with the requirements of
  - 225 Subsection [~~(6)~~] (7).
- 226 [~~(4)~~] (5) Any person who requests a record to obtain information for a story or report
- 227 for publication or broadcast to the general public is presumed to be acting to benefit the public
- 228 rather than a person.
- 229 [~~(5)~~] (6) The following circumstances constitute "extraordinary circumstances" that
- 230 allow a governmental entity to delay approval or denial by an additional period of time as
- 231 specified in Subsection [~~(6)~~] (7) if the governmental entity determines that due to the
- 232 extraordinary circumstances it cannot respond within the time limits provided in Subsection
- 233 [~~(3)~~] (4):
  - 234 (a) another governmental entity is using the record, in which case the originating
  - 235 governmental entity shall promptly request that the governmental entity currently in possession
  - 236 return the record;
  - 237 (b) another governmental entity is using the record as part of an audit, and returning the
  - 238 record before the completion of the audit would impair the conduct of the audit;
  - 239 (c) (i) the request is for a voluminous quantity of records or a record series containing a
  - 240 substantial number of records; or
  - 241 (ii) the requester seeks a substantial number of records or records series in requests
  - 242 filed within five working days of each other;
  - 243 (d) the governmental entity is currently processing a large number of records requests;
  - 244 (e) the request requires the governmental entity to review a large number of records to



245 locate the records requested;

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

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

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

253 ~~[(6)]~~ (7) If one of the extraordinary circumstances listed in Subsection ~~[(5)]~~ (6)  
254 precludes approval or denial within the time specified in Subsection ~~[(3)]~~ (4), the following  
255 time limits apply to the extraordinary circumstances:

256 (a) for claims under Subsection ~~[(5)]~~ (6)(a), the governmental entity currently in  
257 possession of the record shall return the record to the originating entity within five business  
258 days of the request for the return unless returning the record would impair the holder's work;

259 (b) for claims under Subsection ~~[(5)]~~ (6)(b), the originating governmental entity shall  
260 notify the requester when the record is available for inspection and copying;

261 (c) for claims under Subsections ~~[(5)]~~ (6)(c), (d), and (e), the governmental entity shall:

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

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

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

267 (iv) for any person that does not establish a right to an expedited response as  
268 authorized by Subsection ~~[(3)]~~ (4), a governmental entity may choose to:

269 (A) require the person to provide for copying of the records as provided in Subsection  
270 [63G-2-201](#)(10); or

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

273 (d) for claims under Subsection ~~[(5)]~~ (6)(f), the governmental entity shall either  
274 approve or deny the request within five business days after the response time specified for the  
275 original request has expired;

276 (e) for claims under Subsection [~~(5)~~] (6)(g), the governmental entity shall fulfill the  
277 request within 15 business days from the date of the original request; or

278 (f) for claims under Subsection [~~(5)~~] (6)(h), the governmental entity shall complete its  
279 programming and disclose the requested records as soon as reasonably possible.

280 [~~(7)~~] (8) (a) If a request for access is submitted to an office of a governmental entity  
281 other than that specified by rule in accordance with Subsection [~~(2)~~] (3), the office shall  
282 promptly forward the request to the appropriate office.

283 (b) If the request is forwarded promptly, the time limit for response begins when the  
284 [~~record~~] request is received by the office specified by rule.

285 [~~(8)~~] (9) If the governmental entity fails to provide the requested records or issue a  
286 denial within the specified time period, that failure is considered the equivalent of a  
287 determination denying access to the record.

288 Section 3. Section **63G-2-308** is amended to read:

289 **63G-2-308. Segregation of records.**

290 Notwithstanding any other provision in this chapter, if a governmental entity receives a  
291 request for access to a record that contains both information that the requester is entitled to  
292 inspect and information that the requester is not entitled to inspect under this chapter, and, if  
293 the information the requester is entitled to inspect is intelligible, the governmental entity:

294 (1) shall, except as provided in Subsection 63G-2-201(1)(b)(iii), allow access to  
295 information in the record that the requester is entitled to inspect under this chapter; and

296 (2) may deny access to information in the record if the information is exempt from  
297 disclosure to the requester, issuing a notice of denial as provided in Section **63G-2-205**.

298 Section 4. Section **63G-2-400.5** is amended to read:

299 **63G-2-400.5. Definitions.**

300 As used in this part:

301 (1) "Access denial" means a governmental entity's denial, under Subsection  
302 **63G-2-204**[~~(8)~~](9) or Section **63G-2-205**, in whole or in part, of a record request.

303 (2) "Appellate affirmation" means a decision of a chief administrative officer, local  
304 appeals board, or records committee affirming an access denial.

305 (3) "Interested party" means a person, other than a requester, who is aggrieved by an  
306 access denial or an appellate affirmation, whether or not the person participated in proceedings

307 leading to the access denial or appellate affirmation.

308 (4) "Local appeals board" means an appeals board established by a political subdivision  
309 under Subsection 63G-2-701(5)(c).

310 (5) "Record request" means a request for a record under Section 63G-2-204.

311 (6) "Records committee appellant" means:

312 (a) a political subdivision that seeks to appeal a decision of a local appeals board to the  
313 records committee; or

314 (b) a requester or interested party who seeks to appeal to the records committee a  
315 decision affirming an access denial.

316 (7) "Requester" means a person who submits a record request to a governmental entity.  
317 Section 5. Section 63G-2-401 is amended to read:

318 **63G-2-401. Appeal to chief administrative officer -- Notice of the decision of the**  
319 **appeal.**

320 (1) (a) A requester or interested party may appeal an access denial to the chief  
321 administrative officer of the governmental entity by filing a notice of appeal with the chief  
322 administrative officer within 30 days after:

323 (i) the governmental entity sends a notice of denial under Section 63G-2-205, if the  
324 governmental entity denies a record request under Subsection 63G-2-205(1); or

325 (ii) the record request is considered denied under Subsection 63G-2-204[(8)](9), if that  
326 subsection applies.

327 (b) If a governmental entity claims extraordinary circumstances and specifies the date  
328 when the records will be available under Subsection 63G-2-204[(3)](4), and, if the requester  
329 believes the extraordinary circumstances do not exist or that the date specified is unreasonable,  
330 the requester may appeal the governmental entity's claim of extraordinary circumstances or date  
331 for compliance to the chief administrative officer by filing a notice of appeal with the chief  
332 administrative officer within 30 days after notification of a claim of extraordinary  
333 circumstances by the governmental entity, despite the lack of a "determination" or its  
334 equivalent under Subsection 63G-2-204[(8)](9).

335 (2) A notice of appeal shall contain:

336 (a) the name, mailing address, and daytime telephone number of the requester or  
337 interested party; and

338 (b) the relief sought.

339 (3) The requester or interested party may file a short statement of facts, reasons, and  
340 legal authority in support of the appeal.

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

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

346 (ii) send notice of the business confidentiality claim and the schedule for the chief  
347 administrative officer's determination to the requester or interested party within three business  
348 days after receiving notice of the appeal.

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

352 (5) (a) The chief administrative officer shall make a decision on the appeal within:

353 (i) (A) 10 business days after the chief administrative officer's receipt of the notice of  
354 appeal; or

355 (B) five business days after the chief administrative officer's receipt of the notice of  
356 appeal, if the requester or interested party demonstrates that an expedited decision benefits the  
357 public rather than the requester or interested party; or

358 (ii) 12 business days after the governmental entity sends the notice of appeal to a person  
359 who submitted a claim of business confidentiality.

360 (b) (i) If the chief administrative officer fails to make a decision on an appeal of an  
361 access denial within the time specified in Subsection (5)(a), the failure is the equivalent of a  
362 decision affirming the access denial.

363 (ii) If the chief administrative officer fails to make a decision on an appeal under  
364 Subsection (1)(b) within the time specified in Subsection (5)(a), the failure is the equivalent of  
365 a decision affirming the claim of extraordinary circumstances or the reasonableness of the date  
366 specified when the records will be available.

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

369 (6) Except as provided in Section 63G-2-406, the chief administrative officer may,  
370 upon consideration and weighing of the various interests and public policies pertinent to the  
371 classification and disclosure or nondisclosure, order the disclosure of information properly  
372 classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if  
373 the interests favoring access are greater than or equal to the interests favoring restriction of  
374 access.

375 (7) (a) The governmental entity shall send written notice of the chief administrative  
376 officer's decision to all participants.

377 (b) If the chief administrative officer's decision is to affirm the access denial in whole  
378 or in part, the notice under Subsection (7)(a) shall include:

379 (i) a statement that the requester or interested party has the right to appeal the decision,  
380 as provided in Section 63G-2-402, to:

381 (A) the records committee or district court; or

382 (B) the local appeals board, if the governmental entity is a political subdivision and the  
383 governmental entity has established a local appeals board;

384 (ii) the time limits for filing an appeal; and

385 (iii) the name and business address of:

386 (A) the executive secretary of the records committee; and

387 (B) the individual designated as the contact individual for the appeals board, if the  
388 governmental entity is a political subdivision that has established an appeals board under  
389 Subsection 63G-2-701(5)(c).

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

395 (9) The duties of the chief administrative officer under this section may be delegated.