

**RESTRICTION ON GOVERNMENTAL SHARING OF
INFORMATION ON INDIVIDUALS**

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies a provision of the Government Records Access and Management Act relating to the disclosure of information about an individual.

Highlighted Provisions:

This bill:

- ▶ prohibits a governmental entity, and an employee of a governmental entity, from disclosing information about an individual under certain circumstances;
- ▶ provides a penalty for violating the prohibition; and
- ▶ provides exceptions to the prohibition.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-2-206, as last amended by Laws of Utah 2019, Chapter 334

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

Section 1. Section **63G-2-206** is amended to read:



28 **63G-2-206. Sharing records.**

29 (1) [A] Subject to Subsection (10), a governmental entity may provide a record that is
30 private, controlled, or protected to another governmental entity, a government-managed
31 corporation, a political subdivision, the federal government, or another state if the requesting
32 entity:

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

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

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

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

40 (e) (i) is:

41 (A) the Legislature;

42 (B) a legislative committee;

43 (C) a member of the Legislature; or

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

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

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

48 (B) appropriations; or

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

50 (2) (a) [A] Subject to Subsection (10), a governmental entity may provide a private,

51 controlled, or protected record or record series to another governmental entity, a political

52 subdivision, a government-managed corporation, the federal government, or another state if the
53 requesting entity provides written assurance:

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

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

58 (iii) that the use of the record or record series produces a public benefit that is greater

59 than or equal to the individual privacy right that protects the record or record series.

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

63 (3) (a) [~~A~~] Subject to Subsection (10), a governmental entity shall provide a private,
64 controlled, or protected record to another governmental entity, a political subdivision, a
65 government-managed corporation, the federal government, or another state if the requesting
66 entity:

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

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

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

71 (b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection
72 [63G-2-305\(4\)](#).

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

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

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

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

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

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

90 (i) the contractor or private provider's use of the record or record series produces a
91 public benefit that is greater than or equal to the individual privacy right that protects the record
92 or record series;

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

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

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

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

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

98 (iii) the contractor or private provider gives written assurance to the governmental
99 entity that is providing the record or record series that it will adhere to the restrictions of this
100 Subsection (6)(b).

101 (c) The classification of a record already held by a governmental entity and the
102 applicable restrictions on disclosure of that record are not affected by the governmental entity's
103 receipt under this section of a record with a different classification that contains information
104 that is also included in the previously held record.

105 (7) Notwithstanding any other provision of this section, if a more specific court rule or
106 order, state statute, federal statute, or federal regulation prohibits or requires sharing
107 information, that rule, order, statute, or federal regulation controls.

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

109 (i) records held by the Division of Oil, Gas, and Mining that pertain to any person and
110 that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas, and
111 Mining;

112 (ii) except as provided in Subsection (8)(b), records of publicly funded libraries as
113 described in Subsection 63G-2-302(1)(c); and

114 (iii) a record described in Section 63G-12-210.

115 (b) A publicly funded library may share a record that is a private record under
116 Subsection 63G-2-302(1)(c) with a law enforcement agency, as defined in Section 53-1-102, if:

117 (i) the record is a video surveillance recording of the library premises; and

118 (ii) the law enforcement agency certifies in writing that:

119 (A) the law enforcement agency believes that the record will provide important
120 information for a pending investigation into criminal or potentially criminal behavior; and

121 (B) the law enforcement agency's receipt of the record will assist the agency to prevent
122 imminent harm to an individual or imminent and substantial damage to property.

123 (9) Records that may evidence or relate to a violation of law may be disclosed to a
124 government prosecutor, peace officer, or auditor.

125 (10) (a) Except as provided in Subsection (10)(d), a governmental entity that collects
126 from an individual information about the individual, and an employee of the governmental
127 entity, may disclose that information only if:

128 (i) the disclosure directly relates to the purpose for which the information was
129 collected;

130 (ii) before collecting the information, the governmental entity:

131 (A) informs the individual in writing that the individual's information may be
132 disclosed; and

133 (B) provides the individual the opportunity to opt out of the disclosure of the
134 information; and

135 (iii) the individual, after being informed as provided in Subsection (10)(a)(ii)(A), does
136 not opt out of the disclosure.

137 (b) Except as provided in Subsection (10)(d), a governmental entity that receives or
138 retains personal identifying information about an individual, and an employee of the
139 governmental entity, may not disclose that individual's personal identifying information
140 without the prior written consent of the individual.

141 (c) Subsections (10)(a) and (b) apply regardless of how a record containing the
142 information or the information itself is classified under this chapter.

143 (d) Subsections (10)(a) and (b) do not prohibit the disclosure of information about an
144 individual if:

145 (i) the information is disclosed in the aggregate without any information that would
146 allow the identification of an individual whose information is included in the aggregated
147 information; or

148 (ii) the disclosure:

149 (A) is required by law or a court order; or

150 (B) is made to a law enforcement agency that has certified that the information is
151 necessary for a criminal investigation being conducted by the agency.

152 (e) It is a class B misdemeanor for an individual to knowingly or intentionally disclose
153 information in violation of Subsection (10)(a) or (b).