

GOVERNMENT RECORD AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions relating to government records.

Highlighted Provisions:

This bill:

▶ modifies the list of records that may be classified as protected to include an employee statement given as part of a governmental entity's investigation into possible wrongdoing, under certain circumstances;

▶ modifies governmental immunity provisions relating to claims for attorney fees and **H→ [court] ←H** costs under the Government Records Access and Management Act and makes those claims not subject to the Governmental Immunity Act of Utah;

▶ includes **H→ [court] ←H** costs in what can be claimed in certain proceedings under the Government Records Access and Management Act;

▶ modifies a provision relating to the jurisdiction of the Court of Appeals to exclude a proceeding under the Government Records Access and Management Act that precedes judicial review; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

H.B. 399



462 Office of Economic Opportunity determines is nonpublic, confidential information that if
 463 disclosed would result in actual economic harm to the applicant, but this Subsection (83) may
 464 not be used to restrict access to a record evidencing a final contract or approval decision[~~;~~]; and

465 (84) a statement that an employee of a governmental entity provides to the
 466 governmental entity as part of the governmental entity's personnel or administrative
 467 investigation into potential misconduct involving the employee if the governmental entity:

468 (a) requires the statement under threat of employment ~~H~~→ **disciplinary action, including**
 468a possible ~~H~~ termination ~~H~~→ [or-other] of ~~H~~ employment

469 ~~H~~→ [sanction resulting from] , for ~~H~~ the employee's refusal to provide the statement; and

470 (b) provides the employee assurance that the statement cannot be used against the
 471 employee in any criminal proceeding.

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

473 **63G-2-405. Confidential treatment of records for which no exemption applies.**

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

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

477 (b) the interests favoring restriction of access clearly are greater than or equal to the
 478 interests favoring access.

479 (2) If a governmental entity requests a court to restrict access to a record under this
 480 section, the court shall require the governmental entity to pay the reasonable attorney fees and
 481 ~~H~~→ [court] ~~H~~ costs incurred by the lead party in opposing the governmental entity's request, if:

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

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

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

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

492 (b) Access to original data in a computer program may be limited under this section,

493 but the court may consider, in its evaluation of interests favoring restriction of access, only
 494 those interests that relate to the underlying information, and not to the status of that data as part
 495 of a computer program.

496 (5) Except for the waiver of immunity in Subsection 63G-7-301(2)(e), a claim for
 497 attorney fees or ~~H~~→ [court] ←~~H~~ costs under this section is not subject to Title 63G, Chapter 7,
 498 Governmental Immunity Act of Utah.

499 Section 3. Section **63G-2-802** is amended to read:

500 **63G-2-802. Injunction -- Attorney fees and court costs.**

501 (1) A district court in this state may enjoin any governmental entity or political
 502 subdivision that violates or proposes to violate the provisions of this chapter.

503 (2) (a) A district court may assess against any governmental entity or political
 504 subdivision reasonable attorney fees and [other litigation] ~~H~~→ [court] ←~~H~~ costs reasonably
 504a incurred in
 505 connection with a judicial appeal to determine whether a requester is entitled to access to
 506 records under a records request, if the requester substantially prevails.

507 (b) In determining whether to award [attorneys' fees] attorney fees or ~~H~~→ [court] ←~~H~~ costs
 507a under
 508 this section, the court shall consider:

509 (i) the public benefit derived from the case;

510 (ii) the nature of the requester's interest in the records; and

511 (iii) whether the governmental entity's or political subdivision's actions had a
 512 reasonable basis.

513 (c) Attorney fees and ~~H~~→ [court] ←~~H~~ costs shall not ordinarily be awarded if the purpose
 513a of the
 514 litigation is primarily to benefit the requester's financial or commercial interest.

515 (3) Neither attorney fees nor ~~H~~→ [court] ←~~H~~ costs [shall] may be awarded for fees or costs
 516 incurred during administrative proceedings.

517 (4) Notwithstanding Subsection (2), a court may only award attorney fees and
 517a ~~H~~→ [court] ←~~H~~

518 costs incurred in connection with appeals to district courts under Subsection 63G-2-404(2) if
 519 the attorney fees and ~~H~~→ [court] ←~~H~~ costs were incurred 20 or more days after the requester
 519a provided to
 520 the governmental entity or political subdivision a statement of position that adequately explains
 521 the basis for the requester's position.

522 (5) [~~Claims~~] Except for the waiver of immunity in Subsection 63G-7-301(2)(e), a claim
 523 for attorney fees or ~~H~~→ [court] ←~~H~~ costs as provided in this section [or for damages are] is not
 523a subject to

524 Title 63G, Chapter 7, Governmental Immunity Act of Utah.

525 Section 4. Section **63G-7-301** is amended to read:

526 **63G-7-301. Waivers of immunity.**

527 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual
528 obligation.

529 (b) Actions arising out of contractual rights or obligations are not subject to the
530 requirements of Section 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

531 (c) The Division of Water Resources is not liable for failure to deliver water from a
532 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
533 Act, if the failure to deliver the contractual amount of water is due to drought, other natural
534 condition, or safety condition that causes a deficiency in the amount of available water.

535 (2) Immunity from suit of each governmental entity is waived:

536 (a) as to any action brought to recover, obtain possession of, or quiet title to real or
537 personal property;

538 (b) as to any action brought to foreclose mortgages or other liens on real or personal
539 property, to determine any adverse claim on real or personal property, or to obtain an
540 adjudication about any mortgage or other lien that the governmental entity may have or claim
541 on real or personal property;

542 (c) as to any action based on the negligent destruction, damage, or loss of goods,
543 merchandise, or other property while it is in the possession of any governmental entity or
544 employee, if the property was seized for the purpose of forfeiture under any provision of state
545 law;

546 (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of
547 Utah Constitution, Article I, Section 22, for the recovery of compensation from the
548 governmental entity when the governmental entity has taken or damaged private property for
549 public uses without just compensation;

550 (e) [~~subject to Subsection 63G-7-302(2), as to any action brought to recover attorney~~
551 ~~fees] as to any claim for attorney fees or ~~H~~→ [court] ←~~H~~ costs under Sections 63G-2-405 and
551a 63G-2-802;~~

552 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees
553 Act;

554 (g) as to any action brought to obtain relief from a land use regulation that imposes a