

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 ~~costs~~ **[court]** costs under the Government Records Access and Management Act and makes those claims not subject to the Governmental Immunity Act of Utah;

▶ includes ~~costs~~ **[court]** 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



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **63G-2-305**, as last amended by Laws of Utah 2021, Chapters 148, 179, 231, 353, 373,
31 and 382

32 **63G-2-405**, as last amended by Laws of Utah 2012, Chapter 377

33 **63G-2-802**, as last amended by Laws of Utah 2019, Chapter 334

34 **63G-7-301**, as last amended by Laws of Utah 2020, Chapters 288, 338, and 365

35 **63G-7-302**, as last amended by Laws of Utah 2008, Chapter 3 and renumbered and
36 amended by Laws of Utah 2008, Chapter 382

37 **78A-4-103**, as last amended by Laws of Utah 2021, Chapter 130



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

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

41 **63G-2-305. Protected records.**

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

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

45 (2) commercial information or nonindividual financial information obtained from a
46 person if:

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

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

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

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

58 (4) records, the disclosure of which could cause commercial injury to, or confer a

59 competitive advantage upon a potential or actual competitor of, a commercial project entity as
60 defined in Subsection 11-13-103(4);

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

63 (6) records, the disclosure of which would impair governmental procurement
64 proceedings or give an unfair advantage to any person proposing to enter into a contract or
65 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
66 Subsection (6) does not restrict the right of a person to have access to, after the contract or
67 grant has been awarded and signed by all parties:

68 (a) a bid, proposal, application, or other information submitted to or by a governmental
69 entity in response to:

70 (i) an invitation for bids;

71 (ii) a request for proposals;

72 (iii) a request for quotes;

73 (iv) a grant; or

74 (v) other similar document; or

75 (b) an unsolicited proposal, as defined in Section 63G-6a-712;

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

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

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

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

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

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

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

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

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

97 (e) the property under consideration for public acquisition is a single family residence
98 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
99 the property as required under Section 78B-6-505;

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

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

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

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

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

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

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

119 (d) reasonably could be expected to disclose the identity of a source who is not
120 generally known outside of government and, in the case of a record compiled in the course of

121 an investigation, disclose information furnished by a source not generally known outside of
122 government if disclosure would compromise the source; or

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

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

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

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

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

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

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

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

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

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

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

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

154 (A) members of a legislative body;

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

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

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

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

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

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

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

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

172 (a) collective bargaining; or

173 (b) imminent or pending litigation;

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

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

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

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

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

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

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

198 (31) records provided by the United States or by a government entity outside the state
199 that are given to the governmental entity with a requirement that they be managed as protected
200 records if the providing entity certifies that the record would not be subject to public disclosure
201 if retained by it;

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

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

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

210 (35) records that would reveal negotiations regarding assistance or incentives offered
211 by or requested from a governmental entity for the purpose of encouraging a person to expand
212 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
213 person or place the governmental entity at a competitive disadvantage, but this section may not

214 be used to restrict access to a record evidencing a final contract;

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

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

222 (a) the donor requests anonymity in writing;

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

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

230 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
231 73-18-13;

232 (39) a notification of workers' compensation insurance coverage described in Section
233 34A-2-205;

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

237 (i) unpublished lecture notes;

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

239 (A) relating to research; and

240 (B) of:

241 (I) the institution within the state system of higher education defined in Section
242 53B-1-102; or

243 (II) a sponsor of sponsored research;

244 (iii) unpublished manuscripts;

- 245 (iv) creative works in process;
- 246 (v) scholarly correspondence; and
- 247 (vi) confidential information contained in research proposals;
- 248 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
- 249 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 250 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 251 (41) (a) records in the custody or control of the Office of the Legislative Auditor
- 252 General that would reveal the name of a particular legislator who requests a legislative audit
- 253 prior to the date that audit is completed and made public; and
- 254 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 255 Office of the Legislative Auditor General is a public document unless the legislator asks that
- 256 the records in the custody or control of the Office of the Legislative Auditor General that would
- 257 reveal the name of a particular legislator who requests a legislative audit be maintained as
- 258 protected records until the audit is completed and made public;
- 259 (42) records that provide detail as to the location of an explosive, including a map or
- 260 other document that indicates the location of:
- 261 (a) a production facility; or
- 262 (b) a magazine;
- 263 (43) information:
- 264 (a) contained in the statewide database of the Division of Aging and Adult Services
- 265 created by Section 62A-3-311.1; or
- 266 (b) received or maintained in relation to the Identity Theft Reporting Information
- 267 System (IRIS) established under Section 67-5-22;
- 268 (44) information contained in the Licensing Information System described in Title
- 269 62A, Chapter 4a, Child and Family Services;
- 270 (45) information regarding National Guard operations or activities in support of the
- 271 National Guard's federal mission;
- 272 (46) records provided by any pawn or secondhand business to a law enforcement
- 273 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
- 274 Secondhand Merchandise Transaction Information Act;
- 275 (47) information regarding food security, risk, and vulnerability assessments performed

276 by the Department of Agriculture and Food;

277 (48) except to the extent that the record is exempt from this chapter pursuant to Section
278 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or
279 prepared or maintained by the Division of Emergency Management, and the disclosure of
280 which would jeopardize:

281 (a) the safety of the general public; or

282 (b) the security of:

283 (i) governmental property;

284 (ii) governmental programs; or

285 (iii) the property of a private person who provides the Division of Emergency
286 Management information;

287 (49) records of the Department of Agriculture and Food that provides for the
288 identification, tracing, or control of livestock diseases, including any program established under
289 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control
290 of Animal Disease;

291 (50) as provided in Section 26-39-501:

292 (a) information or records held by the Department of Health related to a complaint
293 regarding a child care program or residential child care which the department is unable to
294 substantiate; and

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

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

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

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

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

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

306 (52) the portion of the following documents that contains a candidate's residential or

307 mailing address, if the candidate provides to the filing officer another address or phone number
308 where the candidate may be contacted:

309 (a) a declaration of candidacy, a nomination petition, or a certificate of nomination,
310 described in Section [20A-9-201](#), [20A-9-202](#), [20A-9-203](#), [20A-9-404](#), [20A-9-405](#), [20A-9-408](#),
311 [20A-9-408.5](#), [20A-9-502](#), or [20A-9-601](#);

312 (b) an affidavit of impecuniosity, described in Section [20A-9-201](#); or

313 (c) a notice of intent to gather signatures for candidacy, described in Section
314 [20A-9-408](#);

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

317 (a) conducted within the state system of higher education, as defined in Section
318 [53B-1-102](#); and

319 (b) conducted using animals;

320 (54) in accordance with Section [78A-12-203](#), any record of the Judicial Performance
321 Evaluation Commission concerning an individual commissioner's vote on whether or not to
322 recommend that the voters retain a judge including information disclosed under Subsection
323 [78A-12-203\(5\)\(e\)](#);

324 (55) information collected and a report prepared by the Judicial Performance
325 Evaluation Commission concerning a judge, unless Section [20A-7-702](#) or Title 78A, Chapter
326 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
327 the information or report;

328 (56) records provided or received by the Public Lands Policy Coordinating Office in
329 furtherance of any contract or other agreement made in accordance with Section [63L-11-202](#);

330 (57) information requested by and provided to the 911 Division under Section
331 [63H-7a-302](#);

332 (58) in accordance with Section [73-10-33](#):

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

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

337 (59) the following records in the custody or control of the Office of Inspector General

338 of Medicaid Services, created in Section [63A-13-201](#):

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

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

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

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

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

358 (60) records that reveal methods used by the Office of Inspector General of Medicaid
359 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or
360 abuse;

361 (61) information provided to the Department of Health or the Division of Occupational
362 and Professional Licensing under Subsections [58-67-304](#)(3) and (4) and Subsections
363 [58-68-304](#)(3) and (4);

364 (62) a record described in Section [63G-12-210](#);

365 (63) captured plate data that is obtained through an automatic license plate reader
366 system used by a governmental entity as authorized in Section [41-6a-2003](#);

367 (64) any record in the custody of the Utah Office for Victims of Crime relating to a
368 victim, including:

- 369 (a) a victim's application or request for benefits;
- 370 (b) a victim's receipt or denial of benefits; and
- 371 (c) any administrative notes or records made or created for the purpose of, or used to,
- 372 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim
- 373 Reparations Fund;
- 374 (65) an audio or video recording created by a body-worn camera, as that term is
- 375 defined in Section 77-7a-103, that records sound or images inside a hospital or health care
- 376 facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care
- 377 provider, as that term is defined in Section 78B-3-403, or inside a human service program as
- 378 that term is defined in Section 62A-2-101, except for recordings that:
- 379 (a) depict the commission of an alleged crime;
- 380 (b) record any encounter between a law enforcement officer and a person that results in
- 381 death or bodily injury, or includes an instance when an officer fires a weapon;
- 382 (c) record any encounter that is the subject of a complaint or a legal proceeding against
- 383 a law enforcement officer or law enforcement agency;
- 384 (d) contain an officer involved critical incident as defined in Subsection
- 385 76-2-408(1)(f); or
- 386 (e) have been requested for reclassification as a public record by a subject or
- 387 authorized agent of a subject featured in the recording;
- 388 (66) a record pertaining to the search process for a president of an institution of higher
- 389 education described in Section 53B-2-102, except for application materials for a publicly
- 390 announced finalist;
- 391 (67) an audio recording that is:
- 392 (a) produced by an audio recording device that is used in conjunction with a device or
- 393 piece of equipment designed or intended for resuscitating an individual or for treating an
- 394 individual with a life-threatening condition;
- 395 (b) produced during an emergency event when an individual employed to provide law
- 396 enforcement, fire protection, paramedic, emergency medical, or other first responder service:
- 397 (i) is responding to an individual needing resuscitation or with a life-threatening
- 398 condition; and
- 399 (ii) uses a device or piece of equipment designed or intended for resuscitating an

400 individual or for treating an individual with a life-threatening condition; and
401 (c) intended and used for purposes of training emergency responders how to improve
402 their response to an emergency situation;

403 (68) records submitted by or prepared in relation to an applicant seeking a
404 recommendation by the Research and General Counsel Subcommittee, the Budget
405 Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an
406 employment position with the Legislature;

407 (69) work papers as defined in Section 31A-2-204;

408 (70) a record made available to Adult Protective Services or a law enforcement agency
409 under Section 61-1-206;

410 (71) a record submitted to the Insurance Department in accordance with Section
411 31A-37-201;

412 (72) a record described in Section 31A-37-503;

413 (73) any record created by the Division of Occupational and Professional Licensing as
414 a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);

415 (74) a record described in Section 72-16-306 that relates to the reporting of an injury
416 involving an amusement ride;

417 (75) except as provided in Subsection 63G-2-305.5(1), the signature of an individual
418 on a political petition, or on a request to withdraw a signature from a political petition,
419 including a petition or request described in the following titles:

420 (a) Title 10, Utah Municipal Code;

421 (b) Title 17, Counties;

422 (c) Title 17B, Limited Purpose Local Government Entities - Local Districts;

423 (d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and

424 (e) Title 20A, Election Code;

425 (76) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in
426 a voter registration record;

427 (77) except as provided in Subsection 63G-2-305.5(3), any signature, other than a
428 signature described in Subsection (75) or (76), in the custody of the lieutenant governor or a
429 local political subdivision collected or held under, or in relation to, Title 20A, Election Code;

430 (78) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part

431 5, Victims Guidelines for Prosecutors Act;

432 (79) a record submitted to the Insurance Department under Subsection

433 31A-48-103(1)(b);

434 (80) personal information, as defined in Section 63G-26-102, to the extent disclosure is

435 prohibited under Section 63G-26-103;

436 (81) (a) an image taken of an individual during the process of booking the individual

437 into jail, unless:

438 (i) the individual is convicted of a criminal offense based upon the conduct for which

439 the individual was incarcerated at the time the image was taken;

440 (ii) a law enforcement agency releases or disseminates the image after determining

441 that:

442 (A) the individual is a fugitive or an imminent threat to an individual or to public

443 safety; and

444 (B) releasing or disseminating the image will assist in apprehending the individual or

445 reducing or eliminating the threat; or

446 (iii) a judge orders the release or dissemination of the image based on a finding that the

447 release or dissemination is in furtherance of a legitimate law enforcement interest.

448 (82) a record:

449 (a) concerning an interstate claim to the use of waters in the Colorado River system;

450 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a

451 representative from another state or the federal government as provided in Section

452 63M-14-205; and

453 (c) the disclosure of which would:

454 (i) reveal a legal strategy relating to the state's claim to the use of the water in the

455 Colorado River system;

456 (ii) harm the ability of the Colorado River Authority of Utah or river commissioner to

457 negotiate the best terms and conditions regarding the use of water in the Colorado River

458 system; or

459 (iii) give an advantage to another state or to the federal government in negotiations

460 regarding the use of water in the Colorado River system; [~~and~~]

461 (83) any part of an application described in Section 63N-16-201 that the Governor's

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 ~~the~~ ~~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~~ ~~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~~ ~~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 ~~the~~ ~~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 ~~the~~ ~~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 ~~the~~ ~~costs~~

518 costs incurred in connection with appeals to district courts under Subsection 63G-2-404(2) if
 519 the attorney fees and ~~the~~ ~~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 ~~the~~ ~~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 ~~Ĥ~~→ [court] ←~~Ĥ~~ 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

555 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious
556 Land Use Act;

557 (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

558 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
559 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

560 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
561 or other public improvement;

562 (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury
563 proximately caused by a negligent act or omission of an employee committed within the scope
564 of employment; and

565 (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from
566 a sexual battery, as provided in Section 76-9-702.1, committed:

567 (i) against a student of a public elementary or secondary school, including a charter
568 school; and

569 (ii) by an employee of a public elementary or secondary school or charter school who:

570 (A) at the time of the sexual battery, held a position of special trust, as defined in
571 Section 76-5-404.1, with respect to the student;

572 (B) is criminally charged in connection with the sexual battery; and

573 (C) the public elementary or secondary school or charter school knew or in the exercise
574 of reasonable care should have known, at the time of the employee's hiring, to be a sex
575 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex
576 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a
577 background check under Section 53G-11-402.

578 (3) (a) As used in this Subsection (3):

579 (i) "Code of conduct" means a code of conduct that:

580 (A) is not less stringent than a model code of conduct, created by the State Board of
581 Education, establishing a professional standard of care for preventing the conduct described in
582 Subsection (3)(a)(i)(D);

583 (B) is adopted by the applicable local education governing body;

584 (C) regulates behavior of a school employee toward a student; and

585 (D) includes a prohibition against any sexual conduct between an employee and a

586 student and against the employee and student sharing any sexually explicit or lewd
587 communication, image, or photograph.

588 (ii) "Local education agency" means:

589 (A) a school district;

590 (B) a charter school; or

591 (C) the Utah Schools for the Deaf and the Blind.

592 (iii) "Local education governing board" means:

593 (A) for a school district, the local school board;

594 (B) for a charter school, the charter school governing board; or

595 (C) for the Utah Schools for the Deaf and the Blind, the state board.

596 (iv) "Public school" means a public elementary or secondary school.

597 (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

598 (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering
599 the term "child" in that section to include an individual under age 18.

600 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
601 claim against a local education agency for an injury resulting from a sexual battery or sexual
602 abuse committed against a student of a public school by a paid employee of the public school
603 who is criminally charged in connection with the sexual battery or sexual abuse, unless:

604 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a
605 code of conduct; and

606 (ii) before the sexual battery or sexual abuse occurred, the public school had:

607 (A) provided training on the code of conduct to the employee; and

608 (B) required the employee to sign a statement acknowledging that the employee has
609 read and understands the code of conduct.

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

611 (i) "Higher education institution" means an institution included within the state system
612 of higher education under Section 53B-1-102.

613 (ii) "Policy governing behavior" means a policy adopted by a higher education
614 institution or the Utah Board of Higher Education that:

615 (A) establishes a professional standard of care for preventing the conduct described in
616 Subsections (4)(a)(ii)(C) and (D);

617 (B) regulates behavior of a special trust employee toward a subordinate student;
618 (C) includes a prohibition against any sexual conduct between a special trust employee
619 and a subordinate student; and

620 (D) includes a prohibition against a special trust employee and subordinate student
621 sharing any sexually explicit or lewd communication, image, or photograph.

622 (iii) "Sexual battery" means the offense described in Section 76-9-702.1.

623 (iv) "Special trust employee" means an employee of a higher education institution who
624 is in a position of special trust, as defined in Section 76-5-404.1, with a higher education
625 student.

626 (v) "Subordinate student" means a student:

627 (A) of a higher education institution; and

628 (B) whose educational opportunities could be adversely impacted by a special trust
629 employee.

630 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
631 claim for an injury resulting from a sexual battery committed against a subordinate student by a
632 special trust employee, unless:

633 (i) the institution proves that the special trust employee's behavior that otherwise would
634 constitute a sexual battery was:

635 (A) with a subordinate student who was at least 18 years old at the time of the
636 behavior; and

637 (B) with the student's consent; or

638 (ii) (A) at the time of the sexual battery, the higher education institution was subject to
639 a policy governing behavior; and

640 (B) before the sexual battery occurred, the higher education institution had taken steps
641 to implement and enforce the policy governing behavior.

642 Section 5. Section 63G-7-302 is amended to read:

643 **63G-7-302. Specific remedies -- "Takings" actions.**

644 [(+)] In any action brought under the authority of Article I, Section 22, of the Utah
645 Constitution for the recovery of compensation from the governmental entity when the
646 governmental entity has taken or damaged private property for public uses without just
647 compensation, compensation and damages shall be assessed according to the requirements of

648 Title 78B, Chapter 6, Part 5, Eminent Domain.

649 ~~[(2)(a) Notwithstanding Section 63G-7-401, a notice of claim for attorney fees under~~
650 ~~Subsection 63G-7-301(2)(c) may be filed contemporaneously with a petition for review under~~
651 ~~Section 63G-2-404.]~~

652 ~~[(b) The provisions of Subsection 63G-7-403(1), relating to the governmental entity's~~
653 ~~response to a claim, and the provisions of Section 63G-7-601, requiring an undertaking, do not~~
654 ~~apply to a notice of claim for attorney fees filed contemporaneously with a petition for review~~
655 ~~under Section 63G-2-404.]~~

656 ~~[(c) Any other claim under this chapter that is related to a claim for attorney fees under~~
657 ~~Subsection 63G-7-301(2)(c) may be brought contemporaneously with the claim for attorney~~
658 ~~fees or in a subsequent action.]~~

659 Section 6. Section 78A-4-103 is amended to read:

660 **78A-4-103. Court of Appeals jurisdiction.**

661 (1) As used in this section, "informal adjudicative proceeding" does not include a
662 proceeding under Title 63G, Chapter 2, Part 4, Appeals, that precedes judicial review under
663 Section 63G-2-404.

664 ~~[(1)]~~ (2) The Court of Appeals has jurisdiction to issue all extraordinary writs and to
665 issue all writs and process necessary:

- 666 (a) to carry into effect its judgments, orders, and decrees; or
667 (b) in aid of its jurisdiction.

668 ~~[(2)]~~ (3) The Court of Appeals has appellate jurisdiction, including jurisdiction of
669 interlocutory appeals, over:

670 (a) (i) a final order or decree resulting from:

671 (A) a formal adjudicative proceeding of a state agency;

672 (B) a special adjudicative proceeding, as described in Section 19-1-301.5; or

673 (C) a hearing before a local school board or the State Board of Education as described
674 in Section 53G-11-515; or

675 (ii) an appeal from the district court review of an informal adjudicative proceeding of
676 an agency other than the following:

677 (A) the Public Service Commission;

678 (B) the State Tax Commission;

- 679 (C) the School and Institutional Trust Lands Board of Trustees;
- 680 (D) the Division of Forestry, Fire, and State Lands, for an action reviewed by the
681 executive director of the Department of Natural Resources;
- 682 (E) the Board of Oil, Gas, and Mining; or
- 683 (F) the state engineer;
- 684 (b) appeals from the district court review of:
- 685 (i) adjudicative proceedings of agencies of political subdivisions of the state or other
686 local agencies; and
- 687 (ii) a challenge to agency action under Section [63G-3-602](#);
- 688 (c) appeals from the juvenile courts;
- 689 (d) interlocutory appeals from any court of record in criminal cases, except those
690 involving a charge of a first degree or capital felony;
- 691 (e) appeals from a court of record in criminal cases, except those involving a
692 conviction or charge of a first degree felony or capital felony;
- 693 (f) appeals from orders on petitions for extraordinary writs sought by persons who are
694 incarcerated or serving any other criminal sentence, except petitions constituting a challenge to
695 a conviction of or the sentence for a first degree or capital felony;
- 696 (g) appeals from the orders on petitions for extraordinary writs challenging the
697 decisions of the Board of Pardons and Parole except in cases involving a first degree or capital
698 felony;
- 699 (h) appeals from district court involving domestic relations cases, including, but not
700 limited to, divorce, annulment, property division, child custody, support, parent-time,
701 visitation, adoption, and paternity;
- 702 (i) appeals from the Utah Military Court; and
- 703 (j) cases transferred to the Court of Appeals from the Supreme Court.
- 704 ~~[(3)]~~ (4) The Court of Appeals upon its own motion only and by the vote of four judges
705 of the court may certify to the Supreme Court for original appellate review and determination
706 any matter over which the Court of Appeals has original appellate jurisdiction.
- 707 ~~[(4)]~~ (5) The Court of Appeals shall comply with the requirements of Title 63G,
708 Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.