

1                   **GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT**

2                                   **AMENDMENTS**

3   2023 GENERAL SESSION

4   STATE OF UTAH

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

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

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill makes changes to the Government Records Access and Management Act (act).

11                   **Highlighted Provisions:**

12                   This bill:

13                   ▶ provides that a governmental entity is not required to create a document indicating  
14 that a requested record does not exist;

15                   ▶ requires a governmental entity to conduct a reasonable search for a record;

16                   ▶ requires a person outside of a governmental entity who makes a claim of business  
17 confidentiality for a record the person provided to a governmental entity to  
18 indemnify the governmental entity in an action arising from the governmental  
19 entity's denial of access to the record;

20                   ▶ provides that a governmental entity's failure to provide access to a record is not an  
21 access denial if the failure to provide access is because the governmental entity:

22                                   • does not retain the record;

23                                   • does not retain a record that is responsive to the request; or

24                                   • is not required by the act to respond to or fill the request;

25                   ▶ limits judicial review of an appeal to the State Records Committee (committee) to  
26 the issues raised before the committee;

27                   ▶ defines terms; and



28           ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30           None

31 **Other Special Clauses:**

32           None

33 **Utah Code Sections Affected:**

34 AMENDS:

35           **63G-2-201**, as last amended by Laws of Utah 2019, Chapter 334

36           **63G-2-309**, as last amended by Laws of Utah 2019, Chapter 254

37           **63G-2-400.5**, as last amended by Laws of Utah 2019, Chapters 254, 334

38           **63G-2-404**, as last amended by Laws of Utah 2021, Chapter 325



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

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

42           **63G-2-201. Provisions relating to records -- Public records -- Private, controlled,**  
43 **protected, and other restricted records -- Disclosure and nondisclosure of records --**  
44 **Certified copy of record -- Limits on obligation to respond to record request.**

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

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

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

50           (ii) that is the subject of a records request that the governmental entity is not required  
51 to fill under Subsection [~~(8)(e)~~] **(8)(a)(v)**; or

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

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

56           (C) that the governmental entity cannot readily segregate from the part of the electronic  
57 file that contains a private, controlled, or protected record.

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

59 (3) The following records are not public:

60 (a) a record that is private, controlled, or protected under Sections 63G-2-302,  
61 63G-2-303, 63G-2-304, and 63G-2-305; and

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

66 (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or  
67 63G-2-305 may be classified private, controlled, or protected.

68 (5) (a) A governmental entity may not disclose a record that is private, controlled, or  
69 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section  
70 63G-2-202, 63G-2-206, or 63G-2-303.

71 (b) A governmental entity may disclose a record that is private under Subsection  
72 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in  
73 Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee,  
74 determines that:

75 (i) there is no interest in restricting access to the record; or

76 (ii) the interests favoring access are greater than or equal to the interest favoring  
77 restriction of access.

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

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

81 (A) is mutually beneficial to:

82 (I) the subject of the record;

83 (II) the governmental entity; and

84 (III) the public; and

85 (B) serves a public purpose related to:

86 (I) public safety; or

87 (II) consumer protection; and

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

90 (6) (a) The disclosure of a record to which access is governed or limited pursuant to  
91 court rule, another state statute, federal statute, or federal regulation, including a record for  
92 which access is governed or limited as a condition of participation in a state or federal program  
93 or for receiving state or federal funds, is governed by the specific provisions of that statute,  
94 rule, or regulation.

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

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

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

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

100 (c) the person pays the lawful fees.

101 (8) (a) In response to a request, a governmental entity is not required to:

102 ~~[(a)]~~ (i) create a record, including a record indicating that a requested record does not  
103 exist;

104 ~~[(b)]~~ (ii) compile, format, manipulate, package, summarize, or tailor information;

105 ~~[(c)]~~ (iii) provide a record in a particular format, medium, or program not currently  
106 maintained by the governmental entity;

107 ~~[(d)]~~ (iv) fulfill a person's records request if the request unreasonably duplicates prior  
108 records requests from that person; or

109 ~~[(e)]~~ (v) fill a person's records request if:

110 ~~[(i)]~~ (A) the record requested is:

111 ~~[(A)]~~ (I) publicly accessible online; or

112 ~~[(B)]~~ (II) included in a public publication or product produced by the governmental  
113 entity receiving the request; and

114 ~~[(ii)]~~ (B) the governmental entity:

115 ~~[(A)]~~ (I) specifies to the person requesting the record where the record is accessible  
116 online; or

117 ~~[(B)]~~ (II) provides the person requesting the record with the public publication or  
118 product and specifies where the record can be found in the public publication or product.

119 (b) (i) A governmental entity shall conduct a reasonable search for a requested record.

120 (ii) A governmental entity may comply with the requirement to conduct a reasonable

121 search under Subsection (8)(b)(i) by:

122 (A) identifying a person who may be in possession of a requested record; and

123 (B) collecting the records the person described in Subsection (8)(b)(ii)(A) provides.

124 (9) (a) Although not required to do so, a governmental entity may, upon request from  
125 the person who submitted the records request, compile, format, manipulate, package,  
126 summarize, or tailor information or provide a record in a format, medium, or program not  
127 currently maintained by the governmental entity.

128 (b) In determining whether to fulfill a request described in Subsection (9)(a), a  
129 governmental entity may consider whether the governmental entity is able to fulfill the request  
130 without unreasonably interfering with the governmental entity's duties and responsibilities.

131 (c) A governmental entity may require a person who makes a request under Subsection  
132 (9)(a) to pay the governmental entity, in accordance with Section 63G-2-203, for providing the  
133 information or record as requested.

134 (10) (a) Notwithstanding any other provision of this chapter, and subject to Subsection  
135 (10)(b), a governmental entity is not required to respond to, or provide a record in response to,  
136 a record request if the request is submitted by or in behalf of an individual who is confined in a  
137 jail or other correctional facility following the individual's conviction.

138 (b) Subsection (10)(a) does not apply to:

139 (i) the first five record requests submitted to the governmental entity by or in behalf of  
140 an individual described in Subsection (10)(a) during any calendar year requesting only a record  
141 that contains a specific reference to the individual; or

142 (ii) a record request that is submitted by an attorney of an individual described in  
143 Subsection (10)(a).

144 (11) (a) A governmental entity may allow a person requesting more than 50 pages of  
145 records to copy the records if:

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

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

151 (b) If the requirements of Subsection (11)(a) are met, the governmental entity may:

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

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

157 (12) (a) A governmental entity that owns an intellectual property right and that offers  
158 the intellectual property right for sale or license may control by ordinance or policy the  
159 duplication and distribution of the material based on terms the governmental entity considers to  
160 be in the public interest.

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

164 (13) A governmental entity may not use the physical form, electronic or otherwise, in  
165 which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and  
166 receive a copy of a record under this chapter.

167 (14) Subject to the requirements of Subsection (8), a governmental entity shall provide  
168 access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

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

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

172 (c) the electronic copy of the record:

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

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

176 (15) In determining whether a record is properly classified as private under Subsection  
177 [63G-2-302\(2\)\(d\)](#), the governmental entity, State Records Committee, local appeals board, or  
178 court shall consider and weigh:

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

181 (b) any public interests served by disclosure.

182 Section 2. Section **63G-2-309** is amended to read:

183 **63G-2-309. Confidentiality claims.**

184 (1) (a) (i) Any person who provides to a governmental entity a record that the person  
185 believes should be protected under Subsection 63G-2-305(1) or (2) or both Subsections  
186 63G-2-305(1) and (2) shall provide with the record:

187 (A) a written claim of business confidentiality; and

188 (B) a concise statement of reasons supporting the claim of business confidentiality.

189 (ii) Any of the following who provides to an institution within the state system of  
190 higher education defined in Section 53B-1-102 a record that the person or governmental entity  
191 believes should be protected under Subsection 63G-2-305(40)(a)(ii) or (vi) or both Subsections  
192 63G-2-305(40)(a)(ii) and (vi) shall provide the institution within the state system of higher  
193 education a written claim of business confidentiality in accordance with Section 53B-16-304:

194 (A) a person;

195 (B) a federal governmental entity;

196 (C) a state governmental entity; or

197 (D) a local governmental entity.

198 (b) A person or governmental entity who complies with this Subsection (1) shall be  
199 notified by the governmental entity to whom the request for a record is made if:

200 (i) a record claimed to be protected under one of the following is classified public:

201 (A) Subsection 63G-2-305(1);

202 (B) Subsection 63G-2-305(2);

203 (C) Subsection 63G-2-305(40)(a)(ii);

204 (D) Subsection 63G-2-305(40)(a)(vi); or

205 (E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D);

206 or

207 (ii) the governmental entity to whom the request for a record is made determines that  
208 the record claimed to be protected under a provision listed in Subsection (1)(b)(i) should be  
209 released after balancing interests under Subsection 63G-2-201(5)(b) or 63G-2-401(6).

210 (c) A person who makes a claim of business confidentiality under this Subsection (1)  
211 shall protect, defend, and indemnify the governmental entity that retains the record, and all staff  
212 and employees of the governmental entity from and against any claims, liability, or damages  
213 resulting from or arising from a denial of access to the record as a protected record.

214 (2) (a) Except as provided in Subsection (2)(b) or by court order, the governmental  
215 entity to whom the request for a record is made may not disclose a record claimed to be  
216 protected under a provision listed in Subsection (1)(b)(i) but which the governmental entity or  
217 State Records Committee determines should be disclosed until the period in which to bring an  
218 appeal expires or the end of the appeals process, including judicial appeal.

219 (b) Subsection (2)(a) does not apply where the claimant, after notice, has waived the  
220 claim by not appealing or intervening before the State Records Committee.

221 (3) Disclosure or acquisition of information under this chapter does not constitute  
222 misappropriation under Subsection 13-24-2(2).

223 Section 3. Section 63G-2-400.5 is amended to read:

224 **63G-2-400.5. Definitions.**

225 As used in this part:

226 (1) (a) "Access denial" means a governmental entity's denial, under Subsection  
227 63G-2-204(9) or Section 63G-2-205, in whole or in part, of a record request.

228 (b) "Access denial" does not include a governmental entity's failure to provide access  
229 to a record because the governmental entity:

230 (i) does not retain the record;

231 (ii) does not retain a record that is responsive to the request; or

232 (iii) is not required to respond to or fill the request under this chapter.

233 (2) "Appellate affirmation" means a decision of a chief administrative officer, local  
234 appeals board, or State Records Committee affirming an access denial.

235 (3) "Interested party" means a person, other than a requester, who is aggrieved by an  
236 access denial or an appellate affirmation, whether or not the person participated in proceedings  
237 leading to the access denial or appellate affirmation.

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

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

241 (6) "Records committee appellant" means:

242 (a) a political subdivision that seeks to appeal a decision of a local appeals board to the  
243 State Records Committee; or

244 (b) a requester or interested party who seeks to appeal to the State Records Committee



245 a decision affirming an access denial.

246 (7) "Requester" means a person who submits a record request to a governmental entity.

247 Section 4. Section **63G-2-404** is amended to read:

248 **63G-2-404. Judicial review.**

249 (1) (a) A petition for judicial review of an order or decision, as allowed under this part  
250 or in Subsection **63G-2-701(6)(a)(ii)**, shall be filed no later than 30 days after the date of the  
251 order or decision.

252 (b) The State Records Committee is a necessary party to a petition for judicial review  
253 of a State Records Committee order.

254 (c) The executive secretary of the State Records Committee shall be served with notice  
255 of a petition for judicial review of a State Records Committee order, in accordance with the  
256 Utah Rules of Civil Procedure.

257 (2) (a) A petition for judicial review is a complaint governed by the Utah Rules of Civil  
258 Procedure and shall contain:

259 ~~[(a)]~~ (i) the petitioner's name and mailing address;

260 ~~[(b)]~~ (ii) a copy of the State Records Committee order from which the appeal is taken,  
261 if the petitioner is seeking judicial review of an order of the State Records Committee;

262 ~~[(c)]~~ (iii) the name and mailing address of the governmental entity that issued the  
263 initial determination with a copy of that determination;

264 ~~[(d)]~~ (iv) a request for relief specifying the type and extent of relief requested; and

265 ~~[(e)]~~ (v) a statement of the reasons why the petitioner is entitled to relief.

266 (b) A petition for judicial review may not raise an issue that was not raised in the  
267 petitioner's appeal to the State Records Committee under Section **63G-2-403**.

268 (3) If the appeal is based on the denial of access to a protected record based on a claim  
269 of business confidentiality, the court shall allow the claimant of business confidentiality to  
270 provide to the court the reasons for the claim of business confidentiality.

271 (4) All additional pleadings and proceedings in the district court are governed by the  
272 Utah Rules of Civil Procedure.

273 (5) The district court may review the disputed records. The review shall be in camera.

274 (6) (a) The court shall:

275 (i) make the court's decision de novo, but, for a petition seeking judicial review of a

276 State Records Committee order, allow introduction of evidence presented to the State Records  
277 Committee;

278 (ii) determine all questions of fact and law without a jury; and

279 (iii) decide the issue at the earliest practical opportunity.

280 (b) A court may remand a petition for judicial review to the State Records Committee  
281 if:

282 (i) the remand is to allow the State Records Committee to decide an issue that:

283 (A) involves access to a record; and

284 (B) the State Records Committee has not previously addressed in the proceeding that  
285 led to the petition for judicial review; and

286 (ii) the court determines that remanding to the State Records Committee is in the best  
287 interests of justice.

288 (7) (a) Except as provided in Section [63G-2-406](#), the court may, upon consideration  
289 and weighing of the various interests and public policies pertinent to the classification and  
290 disclosure or nondisclosure, order the disclosure of information properly classified as private,  
291 controlled, or protected if the interest favoring access is greater than or equal to the interest  
292 favoring restriction of access.

293 (b) The court shall consider and, where appropriate, limit the requester's use and  
294 further disclosure of the record in order to protect privacy interests in the case of private or  
295 controlled records, business confidentiality interests in the case of records protected under  
296 Subsections [63G-2-305](#)(1) and (2), and privacy interests or the public interest in the case of  
297 other protected records.