

**Senator Curtis S. Bramble** proposes the following substitute bill:

**GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT**

**AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

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

**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

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

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

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

▶ enacts provisions related to a governmental entity's classification of a record that is the subject of a claim of business confidentiality;

▶ provides that a governmental entity's failure to provide access to a record is not an access denial if the failure to provide access is because the governmental entity is not required by the act to respond to or fill the request;

▶ 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-2-103**, as last amended by Laws of Utah 2021, Chapters 211, 283
- 36       **63G-2-201**, as last amended by Laws of Utah 2019, Chapter 334
- 37       **63G-2-309**, as last amended by Laws of Utah 2019, Chapter 254
- 38       **63G-2-400.5**, as last amended by Laws of Utah 2019, Chapters 254, 334
- 39       **63G-2-404**, as last amended by Laws of Utah 2021, Chapter 325



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

42       Section 1. Section **63G-2-103** is amended to read:

43       **63G-2-103. Definitions.**

44       As used in this chapter:

45       (1) "Audit" means:

46       (a) a systematic examination of financial, management, program, and related records  
 47 for the purpose of determining the fair presentation of financial statements, adequacy of  
 48 internal controls, or compliance with laws and regulations; or

49       (b) a systematic examination of program procedures and operations for the purpose of  
 50 determining their effectiveness, economy, efficiency, and compliance with statutes and  
 51 regulations.

52       (2) "Chronological logs" mean the regular and customary summary records of law  
 53 enforcement agencies and other public safety agencies that show:

54       (a) the time and general nature of police, fire, and paramedic calls made to the agency;

55 and

56       (b) any arrests or jail bookings made by the agency.

57 (3) "Classification," "classify," and their derivative forms mean determining whether a  
58 record series, record, or information within a record is public, private, controlled, protected, or  
59 exempt from disclosure under Subsection [63G-2-201](#)(3)(b).

60 (4) (a) "Computer program" means:

61 (i) a series of instructions or statements that permit the functioning of a computer  
62 system in a manner designed to provide storage, retrieval, and manipulation of data from the  
63 computer system; and

64 (ii) any associated documentation and source material that explain how to operate the  
65 computer program.

66 (b) "Computer program" does not mean:

67 (i) the original data, including numbers, text, voice, graphics, and images;

68 (ii) analysis, compilation, and other manipulated forms of the original data produced by  
69 use of the program; or

70 (iii) the mathematical or statistical formulas, excluding the underlying mathematical  
71 algorithms contained in the program, that would be used if the manipulated forms of the  
72 original data were to be produced manually.

73 (5) (a) "Contractor" means:

74 (i) any person who contracts with a governmental entity to provide goods or services  
75 directly to a governmental entity; or

76 (ii) any private, nonprofit organization that receives funds from a governmental entity.

77 (b) "Contractor" does not mean a private provider.

78 (6) "Controlled record" means a record containing data on individuals that is controlled  
79 as provided by Section [63G-2-304](#).

80 (7) "Designation," "designate," and their derivative forms mean indicating, based on a  
81 governmental entity's familiarity with a record series or based on a governmental entity's  
82 review of a reasonable sample of a record series, the primary classification that a majority of  
83 records in a record series would be given if classified and the classification that other records  
84 typically present in the record series would be given if classified.

85 (8) "Elected official" means each person elected to a state office, county office,  
86 municipal office, school board or school district office, local district office, or special service  
87 district office, but does not include judges.

- 88 (9) "Explosive" means a chemical compound, device, or mixture:  
89 (a) commonly used or intended for the purpose of producing an explosion; and  
90 (b) that contains oxidizing or combustive units or other ingredients in proportions,  
91 quantities, or packing so that:  
92 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the  
93 compound or mixture may cause a sudden generation of highly heated gases; and  
94 (ii) the resultant gaseous pressures are capable of:  
95 (A) producing destructive effects on contiguous objects; or  
96 (B) causing death or serious bodily injury.  
97 (10) "Government audit agency" means any governmental entity that conducts an audit.  
98 (11) (a) "Governmental entity" means:  
99 (i) executive department agencies of the state, the offices of the governor, lieutenant  
100 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,  
101 the Board of Examiners, the National Guard, the Career Service Review Office, the State  
102 Board of Education, the Utah Board of Higher Education, and the State Archives;  
103 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal  
104 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative  
105 committees, except any political party, group, caucus, or rules or sifting committee of the  
106 Legislature;  
107 (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar  
108 administrative units in the judicial branch;  
109 (iv) any state-funded institution of higher education or public education; or  
110 (v) any political subdivision of the state, but, if a political subdivision has adopted an  
111 ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this  
112 chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or  
113 as specified in any other section of this chapter that specifically refers to political subdivisions.  
114 (b) "Governmental entity" also means:  
115 (i) every office, agency, board, bureau, committee, department, advisory board, or  
116 commission of an entity listed in Subsection (11)(a) that is funded or established by the  
117 government to carry out the public's business;  
118 (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative

119 undertaking;

120 (iii) as defined in Section 11-13a-102, a governmental nonprofit corporation;

121 (iv) an association as defined in Section 53G-7-1101;

122 (v) the Utah Independent Redistricting Commission; and

123 (vi) a law enforcement agency, as defined in Section 53-1-102, that employs one or  
124 more law enforcement officers, as defined in Section 53-13-103.

125 (c) "Governmental entity" does not include the Utah Educational Savings Plan created  
126 in Section 53B-8a-103.

127 (12) "Gross compensation" means every form of remuneration payable for a given  
128 period to an individual for services provided including salaries, commissions, vacation pay,  
129 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any  
130 similar benefit received from the individual's employer.

131 (13) "Individual" means a human being.

132 (14) (a) "Initial contact report" means an initial written or recorded report, however  
133 titled, prepared by peace officers engaged in public patrol or response duties describing official  
134 actions initially taken in response to either a public complaint about or the discovery of an  
135 apparent violation of law, which report may describe:

136 (i) the date, time, location, and nature of the complaint, the incident, or offense;

137 (ii) names of victims;

138 (iii) the nature or general scope of the agency's initial actions taken in response to the  
139 incident;

140 (iv) the general nature of any injuries or estimate of damages sustained in the incident;

141 (v) the name, address, and other identifying information about any person arrested or  
142 charged in connection with the incident; or

143 (vi) the identity of the public safety personnel, except undercover personnel, or  
144 prosecuting attorney involved in responding to the initial incident.

145 (b) Initial contact reports do not include follow-up or investigative reports prepared  
146 after the initial contact report. However, if the information specified in Subsection (14)(a)  
147 appears in follow-up or investigative reports, it may only be treated confidentially if it is  
148 private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

149 (c) Initial contact reports do not include accident reports, as that term is described in

150 Title 41, Chapter 6a, Part 4, Accident Responsibilities.

151 (15) "Legislative body" means the Legislature.

152 (16) "Notice of compliance" means a statement confirming that a governmental entity  
153 has complied with an order of the State Records Committee.

154 (17) "Person" means:

155 (a) an individual;

156 (b) a nonprofit or profit corporation;

157 (c) a partnership;

158 (d) a sole proprietorship;

159 (e) other type of business organization; or

160 (f) any combination acting in concert with one another.

161 (18) "Private provider" means any person who contracts with a governmental entity to  
162 provide services directly to the public.

163 (19) "Private record" means a record containing data on individuals that is private as  
164 provided by Section [63G-2-302](#).

165 (20) "Protected record" means a record that is classified protected as provided by  
166 Section [63G-2-305](#).

167 (21) "Public record" means a record that is not private, controlled, or protected and that  
168 is not exempt from disclosure as provided in Subsection [63G-2-201\(3\)\(b\)](#).

169 (22) "Reasonable search" means a search that is:

170 (a) reasonable in scope and intensity; and

171 (b) not unreasonably burdensome for the government entity.

172 [~~22~~] (23) (a) "Record" means a book, letter, document, paper, map, plan, photograph,  
173 film, card, tape, recording, electronic data, or other documentary material regardless of physical  
174 form or characteristics:

175 (i) that is prepared, owned, received, or retained by a governmental entity or political  
176 subdivision; and

177 (ii) where all of the information in the original is reproducible by photocopy or other  
178 mechanical or electronic means.

179 (b) "Record" does not mean:

180 (i) a personal note or personal communication prepared or received by an employee or

181 officer of a governmental entity:

182 (A) in a capacity other than the employee's or officer's governmental capacity; or

183 (B) that is unrelated to the conduct of the public's business;

184 (ii) a temporary draft or similar material prepared for the originator's personal use or

185 prepared by the originator for the personal use of an individual for whom the originator is

186 working;

187 (iii) material that is legally owned by an individual in the individual's private capacity;

188 (iv) material to which access is limited by the laws of copyright or patent unless the

189 copyright or patent is owned by a governmental entity or political subdivision;

190 (v) proprietary software;

191 (vi) junk mail or a commercial publication received by a governmental entity or an

192 official or employee of a governmental entity;

193 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections

194 of a library open to the public;

195 (viii) material that is cataloged, indexed, or inventoried and contained in the collections

196 of a library open to the public, regardless of physical form or characteristics of the material;

197 (ix) a daily calendar or other personal note prepared by the originator for the

198 originator's personal use or for the personal use of an individual for whom the originator is

199 working;

200 (x) a computer program that is developed or purchased by or for any governmental

201 entity for its own use;

202 (xi) a note or internal memorandum prepared as part of the deliberative process by:

203 (A) a member of the judiciary;

204 (B) an administrative law judge;

205 (C) a member of the Board of Pardons and Parole; or

206 (D) a member of any other body, other than an association or appeals panel as defined

207 in Section [53G-7-1101](#), charged by law with performing a quasi-judicial function;

208 (xii) a telephone number or similar code used to access a mobile communication

209 device that is used by an employee or officer of a governmental entity, provided that the

210 employee or officer of the governmental entity has designated at least one business telephone

211 number that is a public record as provided in Section [63G-2-301](#);

212 (xiii) information provided by the Public Employees' Benefit and Insurance Program,  
213 created in Section 49-20-103, to a county to enable the county to calculate the amount to be  
214 paid to a health care provider under Subsection 17-50-319(2)(e)(ii);

215 (xiv) information that an owner of unimproved property provides to a local entity as  
216 provided in Section 11-42-205;

217 (xv) a video or audio recording of an interview, or a transcript of the video or audio  
218 recording, that is conducted at a Children's Justice Center established under Section 67-5b-102;

219 (xvi) child pornography, as defined by Section 76-5b-103;

220 (xvii) before final disposition of an ethics complaint occurs, a video or audio recording  
221 of the closed portion of a meeting or hearing of:

222 (A) a Senate or House Ethics Committee;

223 (B) the Independent Legislative Ethics Commission;

224 (C) the Independent Executive Branch Ethics Commission, created in Section  
225 63A-14-202; or

226 (D) the Political Subdivisions Ethics Review Commission established in Section  
227 63A-15-201; or

228 (xviii) confidential communication described in Section 58-60-102, 58-61-102, or  
229 58-61-702.

230 [~~(23)~~] (24) "Record series" means a group of records that may be treated as a unit for  
231 purposes of designation, description, management, or disposition.

232 [~~(24)~~] (25) "Records officer" means the individual appointed by the chief  
233 administrative officer of each governmental entity, or the political subdivision to work with  
234 state archives in the care, maintenance, scheduling, designation, classification, disposal, and  
235 preservation of records.

236 [~~(25)~~] (26) "Schedule," "scheduling," and their derivative forms mean the process of  
237 specifying the length of time each record series should be retained by a governmental entity for  
238 administrative, legal, fiscal, or historical purposes and when each record series should be  
239 transferred to the state archives or destroyed.

240 [~~(26)~~] (27) "Sponsored research" means research, training, and other sponsored  
241 activities as defined by the federal Executive Office of the President, Office of Management  
242 and Budget:



243 (a) conducted:  
 244 (i) by an institution within the state system of higher education defined in Section  
 245 53B-1-102; and

246 (ii) through an office responsible for sponsored projects or programs; and

247 (b) funded or otherwise supported by an external:

248 (i) person that is not created or controlled by the institution within the state system of  
 249 higher education; or

250 (ii) federal, state, or local governmental entity.

251 ~~[(27)]~~ (28) "State archives" means the Division of Archives and Records Service  
 252 created in Section 63A-12-101.

253 ~~[(28)]~~ (29) "State archivist" means the director of the state archives.

254 ~~[(29)]~~ (30) "State Records Committee" means the State Records Committee created in  
 255 Section 63G-2-501.

256 ~~[(30)]~~ (31) "Summary data" means statistical records and compilations that contain  
 257 data derived from private, controlled, or protected information but that do not disclose private,  
 258 controlled, or protected information.

259 Section 2. Section 63G-2-201 is amended to read:

260 **63G-2-201. Provisions relating to records -- Public records -- Private, controlled,**  
 261 **protected, and other restricted records -- Disclosure and nondisclosure of records --**  
 262 **Certified copy of record -- Limits on obligation to respond to record request.**

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

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

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

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

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

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

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

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

277 (3) The following records are not public:

278 (a) a record that is private, controlled, or protected under Sections 63G-2-302,  
279 63G-2-303, 63G-2-304, and 63G-2-305; and

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

284 (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or  
285 63G-2-305 may be classified private, controlled, or protected.

286 (5) (a) A governmental entity may not disclose a record that is private, controlled, or  
287 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section  
288 63G-2-202, 63G-2-206, or 63G-2-303.

289 (b) A governmental entity may disclose a record that is private under Subsection  
290 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in  
291 Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee,  
292 determines that:

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

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

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

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

299 (A) is mutually beneficial to:

300 (I) the subject of the record;

301 (II) the governmental entity; and

302 (III) the public; and

303 (B) serves a public purpose related to:

304 (I) public safety; or

305 (II) consumer protection; and  
306 (ii) the person who receives the record from the governmental entity agrees not to use  
307 or allow the use of the record for advertising or solicitation purposes.

308 (6) (a) The disclosure of a record to which access is governed or limited pursuant to  
309 court rule, another state statute, federal statute, or federal regulation, including a record for  
310 which access is governed or limited as a condition of participation in a state or federal program  
311 or for receiving state or federal funds, is governed by the specific provisions of that statute,  
312 rule, or regulation.

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

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

- 316 (a) the person requesting the record has a right to inspect it;
- 317 (b) the person identifies the record with reasonable specificity; and
- 318 (c) the person pays the lawful fees.

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

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

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

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

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

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

328 ~~[(f)]~~ (A) the record requested is:

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

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

332 ~~[(g)]~~ (B) the governmental entity:

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

335 ~~[(B)]~~ (II) provides the person requesting the record with the public publication or

336 product and specifies where the record can be found in the public publication or product.

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

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

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

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

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

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

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

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

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

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

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

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

366 (i) provide the requester with the facilities for copying the requested records and

367 require that the requester make the copies; or

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

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

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

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

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

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

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

386 (c) the electronic copy of the record:

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

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

390 (15) In determining whether a record is properly classified as private under Subsection  
391 [63G-2-302\(2\)\(d\)](#), the governmental entity, State Records Committee, local appeals board, or  
392 court shall consider and weigh:

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

395 (b) any public interests served by disclosure.

396 Section 3. Section **63G-2-309** is amended to read:

397 **63G-2-309. Confidentiality claims.**

398 (1) (a) (i) Any person who provides to a governmental entity a record that the person  
399 believes should be protected under Subsection 63G-2-305(1) or (2) or both Subsections  
400 63G-2-305(1) and (2) shall provide with the record:

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

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

403 (ii) Any of the following who provides to an institution within the state system of  
404 higher education defined in Section 53B-1-102 a record that the person or governmental entity  
405 believes should be protected under Subsection 63G-2-305(40)(a)(ii) or (vi) or both Subsections  
406 63G-2-305(40)(a)(ii) and (vi) shall provide the institution within the state system of higher  
407 education a written claim of business confidentiality in accordance with Section 53B-16-304:

408 (A) a person;

409 (B) a federal governmental entity;

410 (C) a state governmental entity; or

411 (D) a local governmental entity.

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

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

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

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

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

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

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

420 or

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

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

429 (d) A governmental entity:

430 (i) is not required to reassess the governmental entity's classification of a record based  
431 on a claim of business confidentiality under this Subsection (1) before the end of the appeals  
432 process, including judicial appeal; and

433 (ii) shall reclassify a record claimed to be protected under this Subsection (1) as  
434 ordered by a court.

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

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

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

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

445 **63G-2-400.5. Definitions.**

446 As used in this part:

447 (1) (a) "Access denial" means a governmental entity's denial, under Subsection  
448 63G-2-204(9) or Section 63G-2-205, in whole or in part, of a record request.

449 (b) "Access denial" does not include a governmental entity's failure to provide access  
450 to a record because the governmental entity is not required to respond to or fill the request  
451 under this chapter.

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

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

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

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

460 (6) "Records committee appellant" means:

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

463 (b) a requester or interested party who seeks to appeal to the State Records Committee  
464 a decision affirming an access denial.

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

466 Section 5. Section **63G-2-404** is amended to read:

467 **63G-2-404. Judicial review.**

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

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

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

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

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

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

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

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

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

485 (b) A petition for judicial review may not raise an issue that was not raised in the  
486 underlying appeal and order.

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

490 (4) All additional pleadings and proceedings in the district court are governed by the



491 Utah Rules of Civil Procedure.

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

493 (6) (a) The court shall:

494 (i) make the court's decision de novo, but, for a petition seeking judicial review of a  
495 State Records Committee order, allow introduction of evidence presented to the State Records  
496 Committee;

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

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

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

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

502 (A) involves access to a record; and

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

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

507 (7) (a) Except as provided in Section 63G-2-406, the court may, upon consideration  
508 and weighing of the various interests and public policies pertinent to the classification and  
509 disclosure or nondisclosure, order the disclosure of information properly classified as private,  
510 controlled, or protected if the interest favoring access is greater than or equal to the interest  
511 favoring restriction of access.

512 (b) The court shall consider and, where appropriate, limit the requester's use and  
513 further disclosure of the record in order to protect privacy interests in the case of private or  
514 controlled records, business confidentiality interests in the case of records protected under  
515 Subsections 63G-2-305(1) and (2), and privacy interests or the public interest in the case of  
516 other protected records.