

63-1b-7. Reporting requirements.

- (1) Each quarter, each state agency shall provide a complete report of the agency's accounts receivable to the Division of Finance.
- (2) (a) The Division of Finance shall use the information provided by the agencies and any additional information from the division's records to compile a one-page summary report of each agency.
 - (b) The summary shall include:
 - (i) the type of revenue that is owed to the agency;
 - (ii) any attempted collection activity; and
 - (iii) any costs incurred in the collection process.
- (3) The Division of Finance shall annually provide copies of each agency's summary to the governor and to the Legislature.

History: C. 1953, 63-1b-7, enacted by L. 1992, ch. 76, § 7. came effective on April 27, 1992, pursuant to Utah Const., Art. VI, Sec. 25.
Effective Dates. — Laws 1992, ch. 76 be-

**CHAPTER 2
 GOVERNMENT RECORDS ACCESS AND
 MANAGEMENT ACT**

Revision of Chapter. — Laws 1991, ch. 259 revised this chapter by repealing §§ 63-2-59 through 63-2-71, 63-2-73, 63-2-75 through 63-2-80, 63-2-84, and 63-2-85.1 through 63-2-89, as enacted by L. 1969, ch. 212, §§ 7, 9, 15, and 21; 1979, ch. 223, § 9; 1984, ch. 67, § 34; and 1985, ch. 86, § 11, and as last amended by L. 1981, ch. 257, §§ 6 and 7; 1985, ch. 86, §§ 1 to 10, 12 to 17, and 20 to 22; and 1987, ch. 92, §§ 110 and 111, relating to archives and records, and enacting §§ 63-2-101 through 63-2-909. Laws 1992, ch. 280, § 63, effective July 1, 1992, amended L. 1991, ch. 259, § 76 to make that act effective July 1, 1992.

Sections 63-2-1 to 63-2-58, relating to the former Department of Finance, were repealed by L. 1963, ch. 148, § 2; 1965, ch. 131, § 17; 1969, ch. 207, § 14; 1969, ch. 212, § 31; 1972, ch. 23, § 3; 1974, ch. 27, § 39; 1977, ch. 249, § 8; 1979, ch. 227, § 11; 1980, ch. 75, § 5; and 1981, ch. 257, § 13. For present provisions relating to the Division of Finance, see § 63A-3-101 et seq.

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PART 1

GENERAL PROVISIONS

63-2-101. Short title.

This chapter is known as the "Government Records Access and Management Act."

History: C. 1953, 63-2-101, enacted by L. § 63 makes L. 1991, ch. 259 effective July 1, 1991, ch. 259, § 8.
Effective Dates. — Laws 1992, ch. 280,

COLLATERAL REFERENCES

Utah Law Review. — Recent Developments in Governmental Law, 1992 Utah L. Rev. 375.
Am. Jur. 2d. — 66 Am. Jur. 2d Records and Recording Laws §§ 1, 2.
C.J.S. — 76 C.J.S. Records §§ 1, 2.

A.L.R. — What constitutes "final opinion" or "order" of federal administrative agency required to be made available for public inspection and copying within meaning of 5 USCS § 552(a)(2)(A), 114 A.L.R. Fed. 287.

63-2-102. Legislative intent.

- (1) In enacting this act, the Legislature recognizes two constitutional rights:
 - (a) the public's right of access to information concerning the conduct of the public's business; and
 - (b) the right of privacy in relation to personal data gathered by governmental entities.
- (2) The Legislature also recognizes a public policy interest in allowing a government to restrict access to certain records, as specified in this chapter, for the public good.
- (3) It is the intent of the Legislature to:
 - (a) promote the public's right of easy and reasonable access to unrestricted public records;
 - (b) specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access;
 - (c) prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided in this chapter;
 - (d) provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and which are consistent with nationwide standards of information practices;
 - (e) favor public access when, in the application of this act, countervailing interests are of equal weight; and
 - (f) establish fair and reasonable records management practices.

History: C. 1953, 63-2-102, enacted by L. 1991, ch. 259, § 9; 1992, ch. 280, § 14.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, in Subsection (1), deleted "fundamental" before "constitutional" in the introductory language and made stylistic changes; inserted present Subsection (2); and rewrote former Subsection (2) as Subsection (3).

Meaning of "this act." — The phrase "this act" means Laws 1991, ch. 259, which revised this chapter; see "Revision of Chapter" note under the chapter heading.

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-103. Definitions.

As used in this chapter:

- (1) "Audit" means:
 - (a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or
 - (b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.
- (2) "Chronological logs" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show the time and general nature of police, fire, and paramedic calls made to the agency and any arrests or jail bookings made by the agency.

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

(4) (a) "Computer program" means a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program.

(b) "Computer program" does not mean:

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

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

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

(5) (a) "Contractor" means:

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

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

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

(6) "Controlled record" means a record containing data on individuals that is controlled as provided by Section 63-2-303.

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

(8) "Government audit agency" means any governmental entity that conducts audits.

(9) (a) "Governmental entity" means:

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons, the Board of Examiners, the National Guard, the Career Service Review Board, the State Board of Education, the State Board of Regents, and the State Archives;

(ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iv) any state-funded institution of higher education or public education; or

(v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

(b) "Governmental entity" also means every office, agency, board, bureau, committee, department, advisory board, or commission of the entities listed in Subsection (9)(a) that is funded or established by the government to carry out the public's business.

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

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

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

(ii) names of victims;

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

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

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

or

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

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

(12) "Individual" means a human being.

(13) "Person" means any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization.

(14) "Private record" means a record containing data on individuals that is private as provided by Section 63-2-302.

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

(16) "Protected record" means a record that is classified protected as provided by Section 63-2-304.

(17) "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63-2-201(3)(b).

- (18) (a) "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data, or other documentary materials regardless of physical form or characteristics:
- (i) which are prepared, owned, received, or retained by a governmental entity or political subdivision; and
 - (ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.
- (b) "Record" does not mean:
- (i) temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom he is working;
 - (ii) materials that are legally owned by an individual in his private capacity;
 - (iii) materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;
 - (iv) proprietary software;
 - (v) junk mail or commercial publications received by a governmental entity or an official or employee of a governmental entity;
 - (vi) books and other materials that are cataloged, indexed, or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material;
 - (vii) daily calendars and other personal notes prepared by the originator for the originator's personal use or for the personal use of an individual for whom he is working;
 - (viii) computer programs as defined in Subsection (4) that are developed or purchased by or for any governmental entity for its own use; or
 - (ix) notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary, an administrative law judge, a member of the Board of Pardons, or a member of any other body charged by law with performing a quasi-judicial function.
- (19) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.
- (20) "Records committee" means the State Records Committee created in Section 63-2-501.
- (21) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.
- (22) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.
- (23) "State archives" means the Division of Archives and Records Service created in Section 63-2-901.
- (24) "State archivist" means the director of the state archives.

(25) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

History: C. 1953, 63-2-103, enacted by L. 1991, ch. 259, § 10; 1992, ch. 280, § 15.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, inserted present Subsections (1), (7), (8), and (11), deleted former Subsection (8), defining "incident reports," redesignated the remaining subsections accordingly, and made related changes; inserted "summary" in Subsection (2); in Subsection (3), substituted the language beginning "mean determining whether" for "mean the process of designating a record series or information within a record series as public, private, confidential, or protected"; inserted the parenthetical phrase in Subsection (4)(b)(iii); rewrote the definition of "confidential record" as "controlled record" in Subsection (6); in Subsection (9)(a)(i), added "executive department agencies of the state" at the beginning and substituted "the State Archives" for "every office, board, bureau, committee, state archives, department, advisory board, or commission in the executive branch that is publicly funded or that is established by the government to carry out the public's business"; deleted "any political subdivision of the state and" from the beginning of Subsection (9)(a)(iv); added Subsection (9)(a)(v) and made related changes; rewrote Subsection (9)(b); deleted "classified" before

"private as" in Subsection (14); substituted "that is not private, controlled, or protected and that is not exempt" for "that has not been appropriately classified private, confidential, or protected as provided in Section 63-2-302, 63-2-303, or 63-2-304 of this chapter or a record that is not restricted" in Subsection (17); divided Subsection (18)(a) into introductory language and Subsection (18)(a)(i), adding Subsection (18)(a)(ii) and making related changes; in Subsection (18)(a)(i), deleted "used" after "owned" and inserted "or political subdivision"; in Subsection (18)(b), added "or political subdivision" at the end of Subsection (iii), rewrote Subsection (vii), and added present Subsection (ix) and made related changes; substituted "designation" for "classification" in Subsection (19); in Subsection (21), substituted "appointed" for "designated" and inserted "or the political subdivision" and "designation, classification"; substituted "specifying" for "designating" in Subsection (22); substituted "controlled" for "confidential" twice in Subsection (25); and made stylistic changes in Subsections (9)(a)(i), (18)(a), and (18)(b)(i).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

NOTES TO DECISIONS

ANALYSIS

Governmental entity.
Public records.
Registers under merit system.
Salaries of college employees.
School records.
—School board minutes
—Survey questionnaire and responses.

Governmental entity.

Former Chapter 2 and the Public and Private Writings Act (§ 78-26-1 et seq.) did not apply to the Utah State Bar because it is not a "state agency" or "public office" within the meaning of those provisions. *Zarnard v. Utah State Bar*, 804 P.2d 526 (Utah 1991).

Public records.

Settlement agreements involving public entities are public documents. *Society of Professional Journalists v. Briggs*, 675 F. Supp. 1308 (D. Utah 1987).

Registers under merit system.

"Eligible register" and "promotional register" provided for under *Deputy Sheriffs Merit*

System Act, § 17-30-1 et seq., are public records subject to public inspection. *Deputy Sheriffs Mut. Aid Ass'n v. Salt Lake County Deputy Sheriffs Merit Sys. Comm.*, 24 Utah 2d 110, 466 P.2d 836 (1970).

Salaries of college employees.

The right of the public to know the salaries paid to college employees outweighs the right of privacy of the employees or of the institution to carry on its operations in secret. *Redding v. Brady*, 606 P.2d 1193 (Utah 1980); but see § 53B-7-205.

School records.

—School board minutes.

Notes taken at the meetings of a local board of education, which were later transcribed, approved, and placed in the journal, were not classifiable as a public writing, whereas the transcribed minutes, in final form, but awaiting only approval and placement in the journal, were a public writing. *Conover v. Board of Educ.*, 1 Utah 2d 375, 267 P.2d 768 (1954).

When a clerk's untranscribed notes are not a

public writing but his transcribed minutes are such a public writing, the minutes should be available to the public within a reasonable time. While "reasonable time" might vary, it would necessarily be before any important action was to take place. *Conover v. Board of Educ.*, 1 Utah 2d 375, 267 P.2d 768 (1954).

—**Survey questionnaire and responses.**

School board's survey questionnaire concerning religious and racial discrimination at school and student responses thereto were "public records" and would be subject to inspec-

tion by an interested citizen unless they were confidential or of such a nature that it would be in public interest to prevent disclosure; in an action to compel disclosure, district court should have held an in camera inspection of the questionnaire and permitted disclosure unless it specifically found, on basis of its inspection, that it would be impossible to edit the questionnaire responses to preserve confidentiality and/or that release of documents in whole or in part would be clearly contrary to public interest. *KUTV, Inc. v. Utah State Bd. of Educ.*, 689 P.2d 1357 (Utah 1984).

COLLATERAL REFERENCES

Utah Law Review. — Note, *Society of Professional Journalists v. Briggs: Toward a Def-*

erential Balancing Test for the Right of Access, 1989 Utah L. Rev. 787.

63-2-104. Administrative Procedures Act not applicable.

Title 63, Chapter 46b, Administrative Procedures Act, does not apply to this chapter except as provided in Section 63-2-603.

History: C. 1953, 63-2-104, enacted by L. 1991, ch. 259, § 11; 1992, ch. 280, § 16.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, added "except as provided in Section 63-2-603" at the end.

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-105. Confidentiality agreements.

If a governmental entity or political subdivision receives a request for a record that is subject to a confidentiality agreement executed before April 1, 1992, the law in effect at the time the agreement was executed, including late judicial interpretations of the law, shall govern access to the record, unless all parties to the confidentiality agreement agree in writing to be governed by the provisions of this chapter.

History: C. 1953, 63-2-105, enacted by L. 1992, ch. 280, § 17.

Effective Dates. — Laws 1992, ch. 280, § 63 makes the act effective on July 1, 1992.

PART 2

ACCESS TO RECORDS

63-2-201. Right to inspect records and receive copies of records.

(1) Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 63-2-203 and 63-2-204.

(2) All records are public unless otherwise expressly provided by statute.

(3) The following records are not public:

- (a) records that are private, controlled, or protected under Sections 63-2-302, 63-2-303, and 63-2-304; and
 - (b) records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.
- (4) Only those records specified in Section 63-2-302, 63-2-303, or 63-2-304 may be classified private, controlled, or protected.
- (5) (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Section 63-2-202, or Section 63-2-206.
- (b) A governmental entity may, at its discretion, disclose records that are private under Subsection 63-2-302(2) or protected under Section 63-2-304 to persons other than those specified in Section 63-2-202 or 63-2-206 if the head of a governmental entity, or a designee, determines that there is no interest in restricting access to the record, or that the interests favoring access outweighs the interest favoring restriction of access.
- (6) (a) The disclosure of records to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.
- (b) This chapter applies to records described in Subsection (a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.
- (7) A governmental entity shall provide a person with a certified copy of a record if:
- (a) the person requesting the record has a right to inspect it;
 - (b) the person identifies the record with reasonable specificity; and
 - (c) the person pays the lawful fees.
- (8) (a) A governmental entity is not required to create a record in response to a request.
- (b) Upon request, a governmental entity shall provide a record in a particular format if:
- (i) the governmental entity is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and
 - (ii) the requester agrees to pay the governmental entity for its additional costs actually incurred in providing the record in the requested format.
- (c) Nothing in this section requires a governmental entity to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.
- (9) If a person requests copies of more than 50 pages of records from a governmental entity, and, if the records are contained in files that do not contain records that are exempt from disclosure, the governmental entity may:
- (a) provide the requester with the facilities for copying the requested records and require that the requester make the copies himself; or

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

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

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

(11) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of persons to inspect and receive copies of a record under this chapter.

History: C. 1953, 63-2-201, enacted by L. 1991, ch. 259, § 12; 1992, ch. 280, § 18.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, inserted "a public record free of charge" and the second occurrence of "the right" in Subsection (1); substituted "are private, controlled, or protected under" for "are appropriately classified private, confidential or protected as allowed by" in Subsection (3)(a); substituted "restricted pursuant to court rule" for "restricted by" and "including records for which access is governed or restricted as a condition" for "either directly or as a condition" in Subsection (3)(b); inserted present Subsections (4) through (6) and (11) and redesignated the remaining subsections

accordingly; added "Upon request" to the beginning of Subsection (8)(b); inserted "copies of" in Subsection (9); added the (a) and (b) designations in Subsection (10); substituted "intellectual property right and that offers the intellectual property right for sale or license" for "a copyright or patent affecting a record, and that offers the copyrighted or patented record for sale" and deleted "access" before "duplication" in Subsection (10)(a); substituted "intellectual property right" for "copyright or patent" in Subsection (10)(b); and made stylistic changes in Subsections (7) and (8).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

COLLATERAL REFERENCES

A.L.R. — State freedom of information act requests: right to receive information in particular medium or format, 86 A.L.R.4th 786.

63-2-202. Access to private, controlled, and protected documents.

- (1) Upon request, a governmental entity shall disclose a private record to:
 - (a) the subject of the record;
 - (b) the parent or legal guardian of an unemancipated minor who is the subject of the record;
 - (c) the legal guardian of a legally incapacitated individual who is the subject of the record;
 - (d) any other individual who:
 - (i) has a power of attorney from the subject of the record; or
 - (ii) submits a notarized release from the subject of the record or his legal representative dated no more than 90 days before the date the request is made; or

- (e) any person to whom the record must be provided pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.
- (2) (a) Upon request, a governmental entity shall disclose a controlled record to:
- (i) a physician, psychologist, or certified social worker upon submission of a notarized release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (b); and
 - (ii) any person to whom the record must be disclosed pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.
- (b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.
- (3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.
- (4) Upon request, a governmental entity shall disclose a protected record to:
- (a) the person who submitted the record;
 - (b) any other individual who:
 - (i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or
 - (ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made; or
 - (c) any person to whom the record must be provided pursuant to a court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.
- (5) A governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, another state, the United States, or a foreign government only as provided by Section 63-2-206.
- (6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.
- (7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:
- (a) the record deals with a matter in controversy over which the court has jurisdiction;
 - (b) the court has considered the merits of the request for access to the record; and
 - (c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections

63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records;

(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) A governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

(i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;

(ii) determines that the proposed research is bona fide, and that the value of the research outweighs the infringement upon personal privacy;

(iii) requires the researcher to assure the integrity, confidentiality, and security of the records and requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from disclosing the record in individually identifiable form, except as provided in Subsection (b), or from using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of his understanding of and agreement to the conditions of this subsection and his understanding that violation of the terms of this subsection may subject him to criminal prosecution under Section 63-2-801.

(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

(c) A governmental entity may require indemnification as a condition of permitting research under this subsection.

(9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6) a governmental entity may disclose records that are private under Section 63-2-302, or protected under Section 63-2-304 to persons other than those specified in this section.

(b) Under Subsection 63-2-403(11)(b) the Records Committee may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

(c) Under Subsection 63-2-404(8) the court may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

History: C. 1953, 63-2-202, enacted by L. 1991, ch. 259, § 13; 1992, ch. 280, § 19.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, inserted present Subsections (3), (7), (8) and (9), deleted former Subsection (6), providing for disclosure if it is in the public interest, and redesignated the remaining subsections accordingly; substituted "90 days" for "30 days" in Subsections (1)(d)(ii), (2)(a)(i), and (4)(b)(ii); rewrote Subsections (1)(e), (2)(a)(ii), and (4)(c); substituted "controlled record" for "record that is classified confidential" in the introductory language of Subsection (2)(a); substituted "controlled" for "confidential" in Subsections (2)(a)(i) and (2)(b);

substituted "all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification" for "the subject of the record" in Subsections (4)(b)(i) and (ii); substituted "private, controlled, or protected record" for "record classified private, confidential, or protected" in Subsections (5) and (6); inserted "political subdivision" in Subsection (5); and made stylistic changes in Subsections (1), (2)(b), and (4).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

NOTES TO DECISIONS

Public's right of access.

In a defamation action by a police officer against a television station, where the City asked for a protective order preventing discovery of its police department personnel and internal affairs files, the trial court was required

to balance the competing interests through an in camera examination of the materials for which the official information privilege was claimed. *Madsen v. United Television, Inc.*, 801 P.2d 912 (Utah 1990).

63-2-203. Fees.

(1) A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of duplicating a record or compiling a record in a form other than that maintained by the governmental entity.

(2) Fees shall be established as follows:

(a) Governmental entities with fees established by the Legislature shall establish fees through the budget process. Governmental entities with fees established by the Legislature may use the procedures of Subsection 63-38-3(3) to set fees until the Legislature establishes fees through the budget process. A fee set by a governmental entity in accordance with Subsection 63-38-3(3) expires on April 26, 1993.

(b) Political subdivisions shall establish fees by ordinance or written formal policy adopted by the governing body.

(c) The judiciary shall establish fees by rules of the judicial council.

(3) A governmental entity may fulfill a record request without charge and is encouraged to do so when it determines that:

(a) releasing the record primarily benefits the public rather than a person;

(b) the individual requesting the record is the subject of the record, or an individual specified in Subsection 63-2-202(1) or (2); or

(c) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

(4) A governmental entity may not charge a fee for:

(a) reviewing a record to determine whether it is subject to disclosure;

or

(b) inspecting a record.

(5) (a) All fees received under this section by a governmental entity subject to Subsection (2)(a) shall be retained by the governmental entity as a dedicated credit.

(b) Those funds shall be used to recover the actual cost and expenses incurred by the governmental entity in providing the requested record or record series.

(6) A governmental entity may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed \$50, or if the requester has not paid fees from previous requests. Any prepaid amount in excess of fees due shall be returned to the requester.

(7) This section does not alter, repeal, or reduce fees established by other statutes or legislative acts.

History: C. 1953, 63-2-203, enacted by L. 1991, ch. 259, § 14; 1992, ch. 280, § 20.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, divided former Subsection (1) into Subsections (1) and (2) and made related changes, inserted present Subsection (6), and redesignated the remaining subsections accordingly; in Subsection (2)(a), rewrote the first sentence and added the second and third sentences; added "or written formal policy adopted by the governing body" to the end of Subsection (2)(b); in the introductory language of Subsection (3), inserted "record" and "and is encouraged to do so"; substituted "a person" for "an individual" in Subsection (3)(a); added "or an individual specified in Sub-

sections 63-2-202(1) or (2)" at the end of Subsection (3)(b); added Subsection (3)(c) and made related changes; rewrote the first sentence of Subsection (5) as Subsection (5)(a) and designated the second sentence as Subsection (5)(b); substituted "governmental entity" for "state agency" in Subsection (5)(b); and, in Subsection (7), substituted "alter, repeal, or reduce" for "apply to" and added "or legislative acts" at the end.

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

Cross-References. — Court fees, Rule 4-301 et seq., Code of Judicial Administration.

63-2-204. Requests — Time limit for response and extraordinary circumstances.

(1) A person making a request for a record shall furnish the governmental entity with a written request containing his name, mailing address, daytime telephone number, if available, and a description of the records requested that identifies the record with reasonable specificity.

(2) A governmental entity may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.

(3) (a) As soon as reasonably possible, but no later than ten business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person, the governmental entity shall respond to the request by:

(i) approving the request and providing the record;

(ii) denying the request;

(iii) notifying the requester that it does not maintain the record and providing, if known, the name and address of the governmental entity that does maintain the record; or

(iv) notifying the requester that because of one of the extraordinary circumstances listed in Subsection (4), it cannot immediately approve or deny the request. The notice shall describe the circumstances relied upon and specify the date when the records will be available.

(b) Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.

(4) The following circumstances constitute "extraordinary circumstances" that allow a governmental entity to delay approval or denial by an additional period of time as specified in Subsection 63-2-204(5) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (3):

(a) another governmental entity is using the record, in which case the originating governmental entity shall promptly request that the governmental entity currently in possession return the record;

(b) another governmental entity is using the record as part of an audit, and returning the record before the completion of the audit would impair the conduct of the audit;

(c) the request is for a voluminous quantity of records;

(d) the governmental entity is currently processing a large number of records requests;

(e) the request requires the governmental entity to review a large number of records to locate the records requested;

(f) the decision to release a record involves legal issues that require the governmental entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;

(g) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or

(h) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.

(5) If one of the extraordinary circumstances listed in Subsection (4) precludes approval or denial within the time specified in Subsection (3), the following time limits apply to the extraordinary circumstances:

(a) for claims under Subsection (4)(a), the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work;

(b) for claims under Subsection (4)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;

(c) for claims under Subsections (4)(c), (d), and (e), the governmental entity shall:

(i) disclose the records that it has located which the requester is entitled to inspect;

(ii) provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request; and

(iii) complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible;

(d) for claims under Subsection (4)(f), the governmental entity shall either approve or deny the request within five business days after the response time specified for the original request has expired;

(e) for claims under Subsection (4)(g), the governmental entity shall fulfill the request within 15 business days from the date of the original request; or

(f) for claims under Subsection (4)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.

(6) (a) If a request for access is submitted to an office of a governmental entity other than that specified by rule in accordance with Subsection (2), the office shall promptly forward the request to the appropriate office.

(b) If the request is forwarded promptly, the time limit for response begins when the record is received by the office specified by rule.

(7) If the governmental entity fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the records.

History: C. 1953, 63-2-204, enacted by L. 1991, ch. 259, § 15; 1992, ch. 280, § 21.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, inserted "if available" in Subsection (1); added present Subsection (3)(b) and redesignated former Subsection (3) as Subsection (3)(a), rewriting the introductory language; divided Subsection (3)(a)(iv) into two sentences, inserting "one of" in the first sentence and substituting "The notice shall describe the circumstances relied upon and specify the" for a comma and "and specifying the earliest time and" at the beginning of the second sentence; deleted former Subsection (4), providing for expedited release of records in certain instances, redesignated the remaining subsections accordingly, and made related internal reference changes; substituted "promptly" for "immediately" in Subsections (4)(a) and (6)(a) and (b); substituted "that require the governmental entity to seek legal

counsel for the" for "requiring" in Subsection (4)(f); rewrote Subsections (4)(g) and (h); deleted "a governmental entity claims that" before "one of the extraordinary" near the beginning of Subsection (5); substituted "records that it has located which the requester is entitled to inspect" for "public records that it has located" in Subsection (5)(c)(i); substituted "work required to respond to the request" for "search" in Subsection (5)(c)(iii); substituted "work" for "search" and "those records that the requester is entitled to inspect" for "the requested records" in Subsection (5)(c)(iii); inserted "business" in Subsection (5)(d); divided Subsection (6) into Subsections (6)(a) and (b); and substituted "specified" for "designated" in Subsections (5)(d) and (6)(b).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-205. Denials.

(1) If the governmental entity denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.

(2) The notice of denial shall contain the following information:

(a) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63-2-201(3)(b);

(b) citations to the provisions of this chapter, court rule or order, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63-2-201(3)(b);

(c) a statement that the requester has the right to appeal the denial to the chief administrative officer of the governmental entity; and

(d) the time limits for filing an appeal, and the name and business address of the chief administrative officer of the governmental entity.

(3) Unless otherwise required by a court or agency of competent jurisdiction, a governmental entity may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process, including judicial appeal.

History: C. 1953, 63-2-205, enacted by L. 1991, ch. 259, § 16; 1992, ch. 280, § 22.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, in Subsection (1), substituted "provide" for "send" and inserted "to the requester either in person or by sending the notice"; in Subsection (2)(a), substituted "controlled" for "confidential," and added "or information exempt from disclosure under Subsection 63-2-201(3)(b)"; in Subsection (2)(b), inserted "court rule or order," substituted "controlled" for "confidential," and added "or infor-

mation exempt from disclosure under Subsection 63-2-201(3)(b)"; deleted "and then to either the records committee or district court" after "entity" in Subsection (2)(c); deleted "a brief summary of the appeals process" from the beginning of Subsection (2)(d); and substituted "period for an appeal" for "period in which to bring an appeal" in Subsection (3).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-206. Sharing records.

(1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:

- (a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;
- (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;
- (c) is authorized by state statute to conduct an audit and the record is needed for that purpose; or
- (d) is one that collects information for presentence, probationary, or parole purposes.

(2) A governmental entity may provide a private or controlled record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:

- (a) that the record or record series is necessary to the performance of the governmental entity's duties and functions;
- (b) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and
- (c) that the use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series.

(3) A governmental entity may provide a record or record series that is protected under Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if:

- (a) the record is necessary to the performance of the requesting entity's duties and functions; or
- (b) the record will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained.

(4) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:

- (a) is entitled by law to inspect the record; or

- (b) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds.
- (5) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, or a foreign government, the originating governmental entity shall:
- (a) inform the recipient of the record's classification and the accompanying restrictions on access; and
 - (b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.
- (6) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1), (2), and (3) without complying with the procedures of Subsection (2) or (5) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.
- (7) A governmental entity receiving a record under this section is subject to the same restrictions on disclosure of the material as the originating entity.
- (8) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.
- (9) The following records may not be shared under this section:
- (a) records held by the State Tax Commission that pertain to any person and that are gathered under authority of Title 59, Revenue and Taxation;
 - (b) records held by the Division of Oil, Gas and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas and Mining; and
 - (c) records of publicly funded libraries as described in Subsection 63-2-302(1)(c).
- (10) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

History: C. 1953, 63-2-206, enacted by L. 1991, ch. 259, § 17; 1992, ch. 228, § 2; 1992, ch. 280, § 23.

Amendment Notes. — The 1992 amendment by ch. 228 inserted Subsection (7), redesignated former Subsections (7) and (8) as Subsections (8) and (9), and made stylistic changes in Subsections (9)(a) and (b).

The 1992 amendment by ch. 280, effective July 1, 1992, rewrote the introductory language of Subsections (1) and (2), making related changes; substituted "enforces, litigates, or investigates civil, criminal, or administrative law" for "enforces or investigates civil or criminal law" in Subsection (1)(b); added Subsection (1)(d) and made related changes; substituted "that is" for "classified" and inserted "a political subdivision, a government-managed corporation, the federal government, or another state" in the introductory language of

Subsection (3); substituted "requesting entity" for "governmental entity" in Subsection (3)(a); redesignated former Subsection (4) as Subsection (6) and former Subsection (6) as Subsection (4); rewrote the introductory language of Subsection (4); in Subsection (5)(b), inserted "if the recipient is not a governmental entity to which this chapter applies" and "which may be by mechanical or electronic transmission"; in Subsection (6), deleted "Notwithstanding Subsection (2)" from the beginning and inserted "without complying with the procedures of Subsections (2) or (5)"; inserted present Subsection (7) and redesignated the remaining subsections accordingly; in Subsection (8), inserted "court rule or order" and "rule, order" and made a punctuation change; rewrote the introductory language of Subsection (9); substituted "Subsection 63-2-302(1)(c)" for "Subsec-

tion 63-2-302(5)" in Subsection (9)(c); and added Subsection (10).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Compiler's Notes. — Laws 1992, ch. 280, § 64, effective July 1, 1992, makes the amend-

ment by ch. 228 effective on July 1, 1992, instead of April 1, 1992, the effective date specified in ch. 228.

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-207. Subpoenas.

Subpoenas and other methods of discovery under the state or federal statutes or rules of civil, criminal, administrative, or legislative procedure are not written requests under Section 63-2-204. Compliance with civil, criminal, administrative, and legislative discovery shall be governed by the applicable statutes and rules of procedure, not by this chapter.

History: C. 1953, 63-2-207, enacted by L. 1992, ch. 280, § 24.

Effective Dates. — Laws 1992, ch. 280, § 63 makes the act effective on July 1, 1992.

PART 3 CLASSIFICATION

63-2-301. Records that must be disclosed.

(1) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63-2-201(3)(b) and (6)(a):

- (a) laws;
- (b) names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of the governmental entity's former and present employees and officers excluding:
 - (i) undercover law enforcement personnel; and
 - (ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;
- (c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;
- (d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63-2-304(15), (16), and (17);
- (e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings, including the records of all votes of each member of the governmental entity;
- (f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;

(g) records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of State Lands and Forestry, the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

- (i) titles or encumbrances to real property;
- (ii) restrictions on the use of real property;
- (iii) the capacity of persons to take or convey title to real property;

or

- (iv) tax status for real and personal property;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

(i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider; and

(k) summary data.

(2) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63-2-201(3)(b), Section 63-2-302, 63-2-303, or 63-2-304:

(a) administrative staff manuals, instructions to staff, and statements of policy;

(b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

(c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;

(d) contracts entered into by a governmental entity;

(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304(34);

(g) chronological logs and initial contact reports;

(h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(i) empirical data contained in drafts if:

(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

(j) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

- (v) a contractor or private provider;
 - (k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;
 - (l) original data in a computer program if the governmental entity chooses not to disclose the program;
 - (m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
 - (n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;
 - (o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:
 - (i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and
 - (ii) the formal charges were sustained;
 - (p) records maintained by the Division of State Lands and Forestry or the Division of Oil, Gas and Mining that evidence mineral production on government lands;
 - (q) final audit reports;
 - (r) occupational and professional licenses;
 - (s) business licenses; and
 - (t) a notice of violation, a notice of agency action under Section 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.
- (3) The list of public records in this section is not exhaustive and should not be used to limit access to records.

History: C. 1953, 63-2-301, enacted by L. 1991, ch. 259, § 18; 1992, ch. 280, § 25.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, so changed the section that a detailed comparison is impracticable, but, among other things, the amendment redesignated former Subsections (11), (15), and (19) as present Subsections (2)(l),

(1)(j), and (1)(k), respectively; deleted former Subsection (10), relating to records not containing data on individuals under certain circumstances; and added Subsections (2)(j)(ii), (iv), and (v), (2)(m) through (t), and (3).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

NOTES TO DECISIONS

Judicial records.

Sealed depositions are "judicial records" and are presumptively public and subject to inspections. This statutory right of inspection can be

restricted only for good cause shown under the protective order provision of Utah Rule of Civil Procedure 26(c). *Carter v. Utah Power & Light Co.*, 800 P.2d 1095 (Utah 1990).

63-2-302. Private records.

- (1) The following records are private:
 - (a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;
 - (b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

- (c) records of publicly funded libraries that when examined alone or with other records identify a patron;
 - (d) records received or generated in a Senate or House ethics committee concerning any alleged violation of the rules on legislative ethics if the ethics committee meeting was closed to the public; and
 - (e) records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions.
- (2) The following records are private if properly classified by a governmental entity:
- (a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection 63-2-302(1)(e).
 - (b) records describing an individual's finances, except that the following are public:
 - (i) records described in Subsection 63-2-301(1);
 - (ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or
 - (iii) records that must be disclosed in accordance with another statute;
 - (c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;
 - (d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy; and
 - (e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.

History: C. 1953, 63-2-302, enacted by L. 1991, ch. 259, § 19; 1992, ch. 280, § 26.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, redesignated the former introductory language and Subsections (1), (3), (5), and (7) as present Subsection (1) and former Subsection (11) as present Subsection (2)(e); rewrote the introductory language of Subsection (1); deleted former Subsections (2), (4), (6), and (8) through (10), which related to an individual's financial records, records containing data on individuals the disclosure of which would be a clearly unwarranted invasion of privacy, certain records of independent state agencies, information in an agency's per-

sonnel files, certain information comprising a personal recommendation or evaluation concerning an individual, and records that would disclose military status; added Subsections (1)(e) and (2) through (2)(d), making related changes; and substituted "government" for "governmental" and the language beginning "managed as private records" for "given private status" in Subsection (2)(e).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

Cross-References. — Salary information as to employees of institutions of higher education private, § 53B-7-205.

COLLATERAL REFERENCES

Am. Jur. 2d. — 62 Am. Jur. 2d Privacy § 1 et seq.; 66 Am. Jur. 2d Records and Recording Laws §§ 27 to 30.

C.J.S. — 76 C.J.S. Records §§ 35 to 41; 77 C.J.S. Right of Privacy §§ 1 to 8.

A.L.R. — Public disclosure of person's indebtedness as violation of right to privacy, 33 A.L.R.3d 154.

Confidentiality of records as to recipients of public welfare, 54 A.L.R.3d 768.

Waiver or loss of right of privacy, 57 A.L.R.3d 16.

Juvenile court records, expungement of, 71 A.L.R.3d 753.

When are government records "personnel files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552 (b)(6)) exempting certain "personnel," medical, and similar files, 104 A.L.R. Fed. 757.

When are government records "similar files" exempt from disclosure under Freedom of Information Act provisions (5 USCS § 552(b)(6)) exempting certain personnel, medical, and "similar" files, 106 A.L.R. Fed. 94.

63-2-303. Controlled records.

A record is controlled if:

- (1) the record contains medical, psychiatric, or psychological data about an individual;
- (2) the governmental entity reasonably believes that:
 - (a) releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual; or
 - (b) releasing the information would constitute a violation of normal professional practice and medical ethics; and
- (3) the governmental entity has properly classified the record.

History: C. 1953, 63-2-303, enacted by L. 1991, ch. 259, § 20; 1992, ch. 280, § 27.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, substituted "record is controlled" for "governmental entity may classify a record as confidential only" in the introductory language; divided former Subsection (2) into introductory language and Sub-

section (2)(a), added Subsection (2)(b), and made related changes; inserted "the information in" and "to the subject of the record" in Subsection (2)(a); and added Subsection (3) and made related changes.

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

COLLATERAL REFERENCES

A.L.R. — When are government records "medical files" exempt from disclosure under Freedom of Information Act provision (5 USCS

§ 552 (b)(6)) exempting certain personnel, "medical," and similar files, 104 A.L.R. Fed. 734.

63-2-304. Protected records.

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

- (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63-2-308;
- (2) commercial information or nonindividual financial information obtained from a person if:
 - (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the infor-

mation or would impair the ability of the governmental entity to obtain necessary information in the future;

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

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308;

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

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

(5) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this subsection does not restrict the right of a person to see bids submitted to or by a governmental entity after bidding has closed;

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

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

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

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

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

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

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

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

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

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

- (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;
 - (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;
 - (d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or
 - (e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;
- (9) records the disclosure of which would jeopardize the life or safety of an individual;
- (10) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental record-keeping systems from damage, theft, or other appropriation or use contrary to law or public policy;
- (11) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;
- (12) records that, if disclosed, would reveal recommendations made to the Board of Pardons by an employee of or contractor for the Department of Corrections, the Board of Pardons, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;
- (13) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;
- (14) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;
- (15) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;
- (16) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;
- (17) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8;
- (18) personal files of a legislator, including personal correspondence to or from a member of the Legislature, but not correspondence that gives notice of legislative action or policy;
- (19) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public;

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

(21) drafts, unless otherwise classified as public;

(22) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

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

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

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

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

(27) records of a public institution of higher education regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings, provided that records reflecting final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

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

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

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

(31) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7 of the Open and Public Meetings Act;

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

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

(34) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

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

(36) the name of a donor or a prospective donor to a governmental entity, including a public institution of higher education, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

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

(c) except for public institutions of higher education, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of his immediate family, or any entity owned or controlled by the donor or his immediate family;

(37) the following records of a public institution of education, which have been developed, discovered, or received by or on behalf of faculty, staff, employees, or students of the institution: unpublished lecture notes, unpublished research notes and data, unpublished manuscripts, creative works in process, scholarly correspondence, and confidential information contained in research proposals. Nothing in this subsection shall be construed to affect the ownership of a record.

History: C. 1953, 63-2-304, enacted by L. 1991, ch. 259, § 21; 1992, ch. 228, § 3; 1992, ch. 280, § 28.

Amendment Notes. — The 1992 amendment by ch. 228 rewrote Subsection (18), which read: "unnumbered bill requests that are designated as protected by the legislator who requests that the bill be prepared by the Office of Legislative Research and General Counsel," and made a stylistic change in Subsection (27).

The 1992 amendment by ch. 280, effective July 1, 1992, rewrote the introductory language; inserted "information" and substituted "obtained from" for "exchanged between a governmental entity and" at the beginning of Subsection (2); substituted "could reasonably be expected to result" for "would result" in Subsection (2)(a); substituted "state economy" for "national economy" in Subsection (3); inserted "certification, registration" in Subsection (4); inserted "or to" near the end of Subsection (5); substituted "appraisal or estimated value of real or personal property, including intellec-

tual property" for "value of the real property" in Subsection (6); deleted "real" before "property" in Subsection (6)(a); inserted present Subsection (6)(b), redesignated part of former Subsection (6)(b) as Subsection (6)(c) and the other part as Subsection (6)(d), making related changes; in Subsection (6)(c), added "in the case of records that would identify property" to the beginning and substituted "described property" for "real property"; in Subsection (6)(d), added the language beginning "in the case of records" and ending "already learned" to the beginning and deleted "real" before "property"; inserted present Subsections (7), (24), and (31) through (37), deleted former Subsection (23), providing that communications between individuals acting in a judiciary capacity are confidential, and redesignated the remaining subsections accordingly; rewrote the introductory language of Subsection (8) and rewrote Subsection (8)(a), inserted present Subsection (8)(b), and changed the remaining designations accordingly; substituted "would create a danger

of depriving" for "deprive" in Subsection (8)(b); added "reasonably could be expected to" to the beginning of Subsections (8)(d) and (e); inserted "or audit" twice in Subsection (8)(e); added "from damage, theft, or other appropriation or use contrary to law or public policy" to the end of Subsection (10); rewrote Subsections (11), (12), (13), and (27); in Subsection (15), inserted "solely" and deleted "unless the records are otherwise classified as public" from the end; made a punctuation change in Subsection (16); substituted "requested to be" for "designated as" in Subsection (19); substituted "Risk Management Fund" for "Division of Risk Management" in Subsection (23); and substituted

"government" for "governmental" and the language beginning "managed as protected records" for "given a protected status" in Subsection (30).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Compiler's Notes. — Laws 1992, ch. 280, § 64, effective July 1, 1992, makes the amendment by L. 1992, ch. 228 effective on July 1, 1992, instead of April 1, 1992, the effective date specified in ch. 228.

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-305. Procedure to determine classification.

(1) If more than one provision of this chapter could govern the classification of a record, the governmental entity shall classify the record by considering the nature of the interests intended to be protected and the specificity of the competing provisions.

(2) Nothing in Subsection 63-2-302(2), Section 63-2-303, or 63-2-304 requires a governmental entity to classify a record as private, controlled, or protected.

History: C. 1953, 63-2-305, enacted by L. 1991, ch. 259, § 22; 1992, ch. 280, § 29.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, substituted "chapter could govern" for "chapter appear to govern" in Subsection (1) and, in Subsection (2),

substituted "Subsection 63-2-302(2), Section 63-2-303" for "Section 63-2-302, 63-2-303" and "controlled" for "confidential."

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-306. Duty to evaluate records and make designations and classifications.

(1) A governmental entity shall:

- (a) evaluate all record series that it uses or creates;
- (b) designate those record series as provided by this chapter; and
- (c) report the designations of its record series to the state archives.

(2) A governmental entity may classify a particular record, record series, or information within a record at any time, but is not required to classify a particular record, record series, or information until access to the record is requested.

(3) A governmental entity may redesignate a record series or reclassify a record or record series, or information within a record at any time.

History: C. 1953, 63-2-306, enacted by L. 1991, ch. 259, § 23; 1992, ch. 280, § 30.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, rewrote the section to such an extent that a detailed analysis is impracticable.

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-307. Segregation of records.

Notwithstanding any other provision in this chapter, if a governmental entity receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect under this chapter, and, if the information the requester is entitled to inspect is intelligible, the governmental entity:

(1) shall allow access to information in the record that the requester is entitled to inspect under this chapter; and

(2) may deny access to information in the record if the information is exempt from disclosure to the requester, issuing a notice of denial as provided in Section 63-2-205.

History: C. 1953, 63-2-307, enacted by L. 1991, ch. 259, § 24; 1992, ch. 280, § 31.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, substituted the language beginning "record that contains both information" and ending "is entitled to inspect is" for "record in a record series that is classified as private, confidential, or protected, and the record contains information that standing alone would be public and" in the introductory

language; in Subsection (1), deleted "public" before "information" and inserted "that the requester is entitled to inspect under this chapter"; and inserted "to the requester" in Subsection (2).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-308. Business confidentiality claims.

(1) (a) Any person who provides to a governmental entity a record that he believes should be protected under Subsection 63-2-304(1) or (2) shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.

(b) The claimant shall be notified by the governmental entity if a record claimed to be protected under Subsection 63-2-304(1) or (2) is classified public or if the governmental entity determines that the record should be released after balancing interests under Subsection 63-2-201(5)(b) or Subsection 63-2-401(6).

(2) Except as provided by court order, the governmental entity may not disclose records claimed to be protected under Subsection 63-2-304(1) or (2) but which it determines should be classified public until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal. This subsection does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the records committee.

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

History: C. 1953, 63-2-308, enacted by L. 1991, ch. 259, § 25; 1992, ch. 280, § 32.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, in Subsection (1)(b), substituted the language beginning "is classified public" and ending "Subsection 63-2-401(6)" for "is not classified protected or if a requester appeals denial of access to the record" and deleted the former second sentence, which read "The claimant shall then be

allowed to provide further support for the claim of business confidentiality"; and, in Subsection (2), added "Except as provided by court order" at the beginning and added the last sentence.

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

PART 4
APPEALS

63-2-401. Appeal to head of governmental entity.

- (1) (a) Any person aggrieved by a governmental entity's access determination under this chapter, including a person not a party to the governmental entity's proceeding, may appeal the determination within 30 days to the chief administrative officer of the governmental entity by filing a notice of appeal.
(b) If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63-2-204(3), and, if the requester believes the extraordinary circumstances do not exist or that the time specified is unreasonable, the requester may appeal the governmental entity's claim of extraordinary circumstances or date for compliance within 30 days after notification of a claim of extraordinary circumstances by the governmental entity, despite the lack of a "determination" or its equivalent under Subsection 63-2-204(7).
- (2) The notice of appeal shall contain the following information:
 - (a) the petitioner's name, mailing address, and daytime telephone number; and
 - (b) the relief sought.
- (3) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.
- (4) (a) If the appeal involves a record that is the subject of a business confidentiality claim under Section 63-2-308, the chief administrative officer shall:
 - (i) send notice of the requester's appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible; and
 - (ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester within three business days after receiving notice of the requester's appeal.

(b) The claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality.
- (5) (a) The chief administrative officer shall make a determination on the appeal within the following period of time:
 - (i) within five business days after the chief administrative officer's receipt of the notice of appeal; or
 - (ii) within twelve business days after the governmental entity sends the requester's notice of appeal to a person who submitted a claim of business confidentiality.

(b) If the chief administrative officer fails to make a determination within the time specified in Subsection (5)(a), the failure shall be considered the equivalent of an order denying the appeal.

(c) The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.

(6) The chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Section 63-2-302(2) or protected under Section 63-2-304 if the interests favoring access outweigh the interests favoring restriction of access.

(7) The governmental entity shall send written notice of the determination of the chief administrative officer to all participants. If the chief administrative officer affirms the denial in whole or in part, the denial shall include a statement that the requester has the right to appeal the denial to either the records committee or district court, the time limits for filing an appeal, and the name and business address of the executive secretary of the records committee.

(8) A person aggrieved by a governmental entity's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the determination on the appeal shall be made within 30 days after receiving the notice of appeal.

(9) The duties of the chief administrative officer under this section may be delegated.

History: C. 1953, 63-2-401, enacted by L. 1991, ch. 259, § 26; 1992, ch. 280, § 33.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, redesignated former Subsection (1) as present Subsection (1)(a), inserted "access" therein, and added Subsection (1)(b); deleted former Subsections (4) through (6), providing that the chief administrative officer inform the claimant of business confidentiality of the appeal, make a determi-

nation on the appeal within five business days and, if the denial is affirmed, send the requester a written statement that the requester may make further appeals; and added present Subsections (4) through (9).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-402. Option for appealing a denial.

(1) If the chief administrative officer of a governmental entity denies a records request under Section 63-2-401, the requester may:

(a) appeal the denial to the records committee as provided in Section 63-2-403; or

(b) petition for judicial review in district court as provided in Section 63-2-404.

(2) Any person aggrieved by a determination of the chief administrative officer of a governmental entity under this chapter, including persons who did not participate in the governmental entity's proceeding, may appeal the determination to the records committee as provided in Section 63-2-403.

History: C. 1953, 63-2-402, enacted by L. 1991, ch. 259, § 27; 1992, ch. 280, § 34.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, in Subsection (2), substituted "chief administrative officer" for

"head" and "persons who did not participate in" for "persons not a party to."

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-403. Appeals to the records committee.

(1) A petitioner, including an aggrieved person who did not participate in the appeal to the governmental entity's chief administrative officer, may appeal to the records committee by filing a notice of appeal with the executive secretary no later than:

(a) 30 days after the chief administrative officer of the governmental entity has granted or denied the records request in whole or in part, including a denial under Subsection 63-2-204(7);

(b) 45 days after the original request for records if:

(i) the circumstances described in Subsection 63-2-401(1)(b) occur; and

(ii) the chief administrative officer failed to make a determination under Section 63-2-401.

(2) The notice of appeal shall contain the following information:

(a) the petitioner's name, mailing address, and daytime telephone number;

(b) a copy of any denial of the records request; and

(c) the relief sought.

(3) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) No later than three business days after receiving a notice of appeal, the executive secretary of the records committee shall:

(a) schedule a hearing for the records committee to discuss the appeal which shall be held no sooner than 15 days and no later than 30 days from the date of the filing of the appeal;

(b) send a copy of the notice of hearing to the petitioner; and

(c) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:

(i) each member of the records committee;

(ii) the records officer and the chief administrative officer of the governmental entity from which the appeal originated;

(iii) any person who made a business confidentiality claim under Section 63-2-308 for a record that is the subject of the appeal; and

(iv) all persons who participated in the proceedings before the governmental entity's chief administrative officer.

(5) No later than ten business days after receiving the notice of appeal, the governmental entity may submit to the executive secretary of the records committee a written statement of facts, reasons, and legal authority in support of its position. The governmental entity shall send a copy of the written statement to the petitioner by first class mail, postage prepaid. The executive secretary shall forward a copy of the written statement to each member of the records committee.

(6) No later than ten business days after the notice of appeal is sent by the executive secretary, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the records committee. Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention. The person seeking intervention shall provide copies of the statement to all parties to the proceedings before the records committee.

(7) The records committee shall hold a hearing no sooner than 15 days and no later than 30 days after receiving the notice of appeal.

(8) At the hearing, the records committee shall allow the parties to testify, present evidence, and comment on the issues. The records committee may allow other interested persons to comment on the issues.

(9) (a) The records committee may review the disputed records. The review shall be in camera.

(b) Members of the records committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by this chapter.

(10) (a) Discovery is prohibited, but the records committee may issue subpoenas or other orders to compel production of necessary evidence.

(b) The records committee's review shall be de novo.

(11) (a) No later than three business days after the hearing, the records committee shall issue a signed order either granting the petition in whole or in part or upholding the determination of the governmental entity in whole or in part.

(b) The records committee may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access outweighs the interest favoring restriction of access.

(c) In making a determination under Subsection (b), the records committee shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records.

(12) The order of the records committee shall include:

(a) a statement of reasons for the decision, including citations to this chapter, court rule or order, another state statute, federal statute, or federal regulation that governs disclosure of the record, provided that the citations do not disclose private, controlled, or protected information;

(b) a description of the record or portions of the record to which access was ordered or denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63-2-201(3)(b);

(c) a statement that any party to the proceeding before the records committee may appeal the records committee's decision to district court; and

(d) a brief summary of the appeals process, the time limits for filing an appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.

(13) If the records committee fails to issue a decision within 35 days of the filing of the notice of appeal, that failure shall be considered the equivalent of an order denying the appeal. The petitioner shall notify the records committee in writing if he considers the appeal denied.

History: C. 1953, 63-2-403, enacted by L. 1991, ch. 259, § 28; 1992, ch. 280, § 35.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, inserted the language beginning "including an aggrieved person" and ending "chief administrative officer" in Subsection (1); rewrote Subsections (1)(a) and (b); added present Subsection (2)(b), redesignating former Subsection (2)(b) as present Subsection (2)(c) and making a related change; substituted "three business days" for "five days" near the beginning of Subsection (4); substituted "no sooner than 15 days and no later than 30 days" for "within 30 days" in Subsection (4)(a); substituted "send" for "forward" near the beginning of Subsection (4)(c); rewrote Subsection (4)(c)(iii); added Subsection (4)(c)(iv), making related changes; deleted former Subsection (6), relating to intervention in the record committee's proceeding and allowing claimants of business confidentiality to

provide reasons for its claim in the case of protected records; added present Subsection (6); substituted "no sooner than 15 days and no later than 30 days after" for "within 30 days of" in Subsection (7); divided Subsection (9)(a) into two sentences, adding "The review shall be" to the beginning of the second sentence; substituted "controlled" for "confidential" in Subsections (11)(b) and (12)(a) and (b); substituted the language beginning "favoring access" for "in access outweighs a person's or governmental entity's interests in restricting access" in Subsection (11)(b); added Subsection (11)(c); inserted "court rule or order" in Subsection (12)(a); and added "or information exempt from disclosure under Subsection 63-2-201(3)(b)" to the end of Subsection (12)(b).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-404. Judicial review.

(1) Any party to a proceeding before the records committee may petition for judicial review by the district court of the records committee's order. The petition shall be filed no later than 30 days after the date of the records committee's order.

(2) (a) A requester may petition for judicial review by the district court of a governmental entity's determination as specified in Subsection 63-2-402(1)(b).

(b) The requester shall file a petition no later than:

(i) 30 days after the governmental entity has responded to the records request by either providing the requested records or denying the request in whole or in part;

(ii) 35 days after the original request if the governmental entity failed to respond to the request; or

(iii) 45 days after the original request for records if:

(A) the circumstances described in Subsection 63-2-401(1)(b) occur; and

(B) the chief administrative officer failed to make a determination under Section 63-2-401.

(3) The petition for judicial review shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain:

(a) the petitioner's name and mailing address;

(b) a copy of the records committee order from which the appeal is taken, if the petitioner brought a prior appeal to the records committee;

(c) the name and mailing address of the governmental entity that issued the initial determination with a copy of that determination;

(d) a request for relief specifying the type and extent of relief requested; and

(e) a statement of the reasons why the petitioner is entitled to relief.

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

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

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

(7) The court shall:

(a) make its decision de novo, but allow introduction of evidence presented to the records committee;

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

(c) decide the issue at the earliest practical opportunity.

(8) (a) The court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the interest favoring access outweighs the interest favoring restriction of access.

(b) The court shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records.

History: C. 1953, 63-2-404, enacted by L. 1991, ch. 259, § 29; 1992, ch. 280, § 36.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, changed the designations in Subsection (2), adding Subsection (2)(b)(iii) and making related changes; divided Subsection (6) into two sentences, adding "The review shall be" to the beginning of the second sentence; designated former Subsection (8) as Subsection (8)(a), adding Subsection (8)(b); and

substituted the language beginning "controlled, or protected if the interest" for "confidential, or protected if the public interest in access outweighs a person's or governmental entity's interests in restricting access" in Subsection (8)(a).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

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

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

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

(b) the interests favoring restriction of access clearly outweigh the interests favoring access.

(2) If a governmental entity requests a court to restrict access to a record under this section, the court shall require the governmental entity to pay the reasonable attorneys' fees incurred by the lead party in opposing the governmental entity's request, if:

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

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

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

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

(b) Access to original data in a computer program may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interests that relate to the underlying information, and not to the status of that data as part of a computer program.

History: C. 1953, 63-2-405, enacted by L. 1992, ch. 280, § 37.

Effective Dates. — Laws 1992, ch. 280, § 63 makes the act effective on July 1, 1992.

PART 5

STATE RECORDS COMMITTEE

63-2-501. State Records Committee created — Membership.

(1) There is created the State Records Committee within the Department of Administrative Services to consist of the following seven individuals:

(a) an individual in the private sector whose profession requires him to create or manage records that if created by a governmental entity would be private or controlled;

(b) the state auditor;

(c) the director of the Division of State History;

(d) the governor or the governor's designee;

(e) one citizen member;

(f) one elected official representing political subdivisions; and

(g) one individual representing the news media.

(2) The members specified in Subsections (1)(a), (e), (f), and (g) shall be appointed by the governor.

(a) The initial board members appointed by the governor shall serve the following terms:

(i) the initial citizen member shall be the same citizen member serving on the State Records Committee created under Section 63-2-68, and shall serve until his term on that committee would otherwise expire;

(ii) the remaining members initially appointed by the governor shall draw by lot so that one is appointed to a two-year term, one is appointed to a three-year term, and one is appointed to a four-year term.

(b) The successors of the initial board shall be appointed for a term of four years, except that when a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(c) Each appointed member is eligible for reappointment for one additional term.

(d) A vacancy in the membership of the committee shall occur if the elected official representing a political subdivision vacates the elected office for any reason.

History: C. 1953, 63-2-501, enacted by L. 1991, ch. 259, § 30; 1992, ch. 280, § 38.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, redesignated the introductory language and Subsections (1) through (7) as Subsection (1) and added Subsection (2); rewrote Subsection (1)(a), which formerly read "state archivist"; substituted "governor or the governor's" for "attorney general or the attorney general's" in Subsection (1)(d); deleted "appointed for a four year term by the governor upon the recommendation of

the members of the records committee" from the end of Subsection (1)(e); substituted "elected official" for "individual" and deleted "appointed by the governor for a four-year term" after "subdivisions" in Subsection (1)(f); and deleted "appointed by the governor for a four-year term" after "media" in Subsection (1)(g).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-502. State Records Committee — Duties.

- (1) The records committee shall:
 - (a) meet at least once every three months;
 - (b) review and approve retention and disposal of records;
 - (c) hear appeals from determinations of access as provided by Section 63-2-403; and
 - (d) appoint a chairman from among its members.
- (2) The records committee may:
 - (a) make rules to govern its own proceedings as provided by Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and
 - (b) by order, after notice and hearing, reassign classification and designation for any record series by a governmental entity if the governmental entity's classification or designation is inconsistent with this chapter.
- (3) The state archivist is the executive secretary to the records committee.
- (4) Five members of the records committee are a quorum for the transaction of business.
- (5) The state archives shall provide staff and support services for the records committee.
- (6) Unless otherwise reimbursed, the citizen member, the individual in the private sector, and the representative of the news media shall receive a per diem as established by the Division of Finance in Section 63-1-14.5.
- (7) If the records committee reassigns the classification or designation of a record or record series under Subsection (2)(b), any affected governmental entity or any other interested person may appeal the reclassification or redesignation to the district court. The district court shall hear the matter de novo.
- (8) The Office of the Attorney General shall provide counsel to the records committee and shall review proposed retention schedules.

History: C. 1953, 63-2-502, enacted by L. 1991, ch. 259, § 31; 1992, ch. 280, § 39.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, deleted "to review and approve rules and programs for the collection, classification, and disclosure of records" from the end of Subsection (1)(a); added "by order, after notice and hearing" to the beginning and inserted "and designation" and "or designation" in Subsection (2)(b); inserted "the

individual in the private sector" in Subsection (6); in Subsection (7), inserted "or designation" and "or redesignation" and substituted "any affected governmental entity or any other interested person" for "the governmental entity" in the first sentence and added the second sentence; and added Subsection (8).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

PART 6
ACCURACY OF RECORDS

63-2-601. Rights of individuals on whom data is maintained.

- (1) (a) Each governmental entity shall file with the state archivist a statement explaining the purposes for which record series designated private or controlled are collected and used by that governmental entity.
 (b) That statement is a public record.
- (2) Upon request, each governmental entity shall explain to an individual:
 (a) the reasons the individual is asked to furnish to the governmental entity information that could be classified private or controlled;
 (b) the intended uses of the information; and
 (c) the consequences for refusing to provide the information.
- (3) A governmental entity may not use private or controlled records for purposes other than those given in the statement filed with the state archivist under Subsection (1) or for purposes other than those for which another governmental entity could use the record under Section 63-2-206.

History: C. 1953, 63-2-601, enacted by L. 1991, ch. 259, § 32; 1992, ch. 280, § 40.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, added the (a) and (b) designations in Subsection (1); substituted "record series designated private or controlled" for "data on individuals" in Subsection (1)(a); substituted "the individual" for "he" and the language beginning "to the governmental entity" for "private or confidential information"

in Subsection (2)(a); and substituted "or controlled records" for "confidential, or protected data" and "purposes other than those for which another governmental entity could use the record under" for "sharing records as specified in" in Subsection (3).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-602. Disclosure to subject of records — Context of use.

When providing records under Subsection 63-2-202(1) or when providing public records about an individual to the persons specified in Subsection 63-2-202(1), a governmental entity shall, upon request, disclose the context in which the record is used.

History: C. 1953, 63-2-602, enacted by L. 1991, ch. 259, § 33; 1992, ch. 280, § 41.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, rewrote this section.

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-603. Requests to amend a record — Appeals.

- (1) Proceedings of state agencies under this section shall be governed by Title 63, Chapter 46b, Administrative Procedures Act.
- (2) (a) Subject to Subsection (8), an individual may contest the accuracy or completeness of any public, or private, or protected record concerning him by requesting the governmental entity to amend the record. However, this section does not affect the right of access to private or protected records.
 - (b) The request shall contain the following information:
 - (i) the requester's name, mailing address, and daytime telephone number; and
 - (ii) a brief statement explaining why the governmental entity should amend the record.
- (3) The governmental entity shall issue an order either approving or denying the request to amend as provided in Title 63, Chapter 46b, Administrative Procedures Act, or, if the act does not apply, no later than 30 days after receipt of the request.
- (4) If the governmental entity approves the request, it shall correct all of its records that contain the same incorrect information as soon as practical. A governmental entity may not disclose the record until it has amended it.
- (5) If the governmental entity denies the request, it shall:
 - (a) inform the requester in writing; and
 - (b) provide a brief statement giving its reasons for denying the request.
- (6) (a) If a governmental entity denies a request to amend a record, the requester may submit a written statement contesting the information in the record.
 - (b) The governmental entity shall:
 - (i) file the requester's statement with the disputed record if the record is in a form such that the statement can accompany the record or make the statement accessible if the record is not in a form such that the statement can accompany the record; and
 - (ii) disclose the requester's statement along with the information in the record whenever the governmental entity discloses the disputed information.
- (7) The requester may appeal the denial of the request to amend a record pursuant to the Administrative Procedures Act or, if that act does not apply, to district court.
- (8) This section does not apply to records relating to title to real or personal property, medical records, judicial case files, or any other records that the governmental entity determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

History: C. 1953, 63-2-603, enacted by L. 1991, ch. 259, § 34; 1992, ch. 280, § 42.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, added present Subsection (1), renumbering the other subsections accordingly and making a related reference change in Subsection (2)(a); changed the internal designations in Subsections (2) and (6); substituted "public, or private, or protected record concerning him by requesting" for "data

on individuals classified as public or private concerning him by petitioning" in the first sentence of Subsection (2)(a) and added the second sentence of that subsection; substituted "request" for "petition," "requester" for "petitioner," and "requester's" for "petitioner's" throughout the section; rewrote Subsection (3), which formerly read "The governmental entity shall either approve or deny the petition to amend no later than 30 days after the peti-

tion"; and inserted "pursuant to the Administrative Procedures Act or, if that act does not apply" in Subsection (7).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

PART 7

APPLICABILITY TO POLITICAL SUBDIVISIONS, THE JUDICIARY, AND THE LEGISLATURE

63-2-701. Political subdivisions may adopt ordinances in compliance with chapter.

- (1) (a) Each political subdivision may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention, and amendment of records.
 - (b) The ordinance or policy shall comply with the criteria set forth in this section.
 - (c) If any political subdivision does not adopt and maintain an ordinance or policy, then that political subdivision is subject to this chapter.
 - (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision is subject to Parts 1 and 3, and Sections 63-2-201, 63-2-202, 63-2-205, 63-2-206, 63-2-601, 63-2-602, 63-2-905, and 63-2-907.
 - (e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed with the state archives no later than 30 days after its effective date.
 - (f) The political subdivision shall also report to the state archives all retention schedules, and all designations and classifications applied to record series maintained by the political subdivision.
- (2) Each ordinance or policy relating to information practices shall:
 - (a) provide standards for the classification and designation of the records of the political subdivision as public, private, controlled, or protected in accordance with Part 3 of this chapter;
 - (b) require the classification of the records of the political subdivision in accordance with those standards;
 - (c) provide guidelines for establishment of fees in accordance with Section 63-2-203; and
 - (d) provide standards for the management and retention of the records of the political subdivision comparable to Section 63-2-903.
- (3) (a) Each ordinance or policy shall establish access criteria, procedures, and response times for requests to inspect, obtain, or amend records of the political subdivision, and time limits for appeals consistent with this chapter.
 - (b) In establishing response times for access requests and time limits for appeals, the political subdivision may establish reasonable time frames different than those set out in Section 63-2-204 and Part 4 of this chapter if it determines that the resources of the political subdivision are insufficient to meet the requirements of those sections.
- (4) (a) The political subdivision shall establish an appeals process for persons aggrieved by classification, designation or access decisions.
 - (b) The policy or ordinance shall provide for:

(i) an appeals board composed of the governing body of the political subdivision; or

(ii) a separate appeals board composed of members of the governing body and the public, appointed by the governing body.

(5) If the requester concurs, the political subdivision may also provide for an additional level of administrative review to the records committee in accordance with Section 63-2-403.

(6) Appeals of the decisions of the appeals boards established by political subdivisions shall be by petition for judicial review to the district court. The contents of the petition for review and the conduct of the proceeding shall be in accordance with Sections 63-2-402 and 63-2-404.

(7) Any political subdivision that adopts an ordinance or policy under Subsection (1) shall forward to state archives a copy and summary description of the ordinance or policy.

History: C. 1953, 63-2-701, enacted by L. 1991, ch. 259, § 35; 1992, ch. 280, § 43.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, added the (a) through (e) designations in Subsection (1); added Subsection (1)(f); substituted "designation, access, denials, segregation, appeals, management, retention, and amendment of records" for "access, appeals, management, and retention" in Subsection (1)(a); deleted "on or before April 1, 1992" after "ordinance or policy" in Subsection (1)(c); substituted the language beginning "Parts 1 and 3" for "Section 63-2-201" in Subsection (1)(d); inserted "and designation" and substituted "controlled, or protected in accordance with Part 3 of this chapter" for "confidential, or protected in accordance with Sections 63-2-301, 63-2-302,

63-2-303, and 63-2-304" in Subsection (2)(a); added Subsection (2)(d), making related changes; added the (a) and (b) designations in Subsections (3) and (4), redesignating former Subsections (4)(a) and (b) as Subsection (4)(b)(i) and (ii); substituted "inspect, obtain, or amend" for "inspect or obtain" and added "consistent with this chapter" to the end, in Subsection (3)(a); inserted "designation" in Subsection (4)(a); substituted "appointed" for "designated" in Subsection (4)(b)(ii); substituted "Sections 63-2-402 and 63-2-404" for "Section 63-2-402" at the end of Subsection (6); and added Subsection (7).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-702. Applicability to judiciary.

(1) The judiciary is subject to the provisions of this chapter except as provided in this section.

(2) (a) The judiciary is not subject to Part 4 of this chapter except as provided in Subsection (5).

(b) The judiciary is not subject to Part 5 of this chapter.

(c) The judiciary is subject to only the following sections in Part 9 of this chapter: Sections 63-2-905 and 63-2-906.

(3) The Judicial Council, the Administrative Office of the Courts, the courts, and other administrative units in the judicial branch shall designate and classify their records in accordance with Sections 63-2-301 through 63-2-304.

(4) Substantially consistent with the provisions of this chapter, the Judicial Council shall:

(a) make rules governing requests for access, fees, classification, designation, segregation, management, denials and appeals of requests for access and retention, and amendment of judicial records;

(b) establish an appellate board to handle appeals from denials of requests for access and provide that a requester who is denied access by the appellate board may file a lawsuit in district court; and

(c) provide standards for the management and retention of judicial records substantially consistent with Section 63-2-903.

(5) Rules governing appeals from denials of requests for access shall substantially comply with the time limits provided in Section 63-2-204 and Part 4 of this chapter.

(6) Upon request, the state archivist shall:

(a) assist with and advise concerning the establishment of a records management program in the judicial branch; and

(b) as required by the judiciary, provide program services similar to those available to the executive and legislative branches of government as provided in this chapter.

History: C. 1953, 63-2-702, enacted by L. 1991, ch. 259, § 36; 1992, ch. 280, § 44.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, added present Subsections (1), (2), and (5), redesignating the other subsections accordingly; inserted "designate and" in Subsection (3); substituted "Substantially consistent with the provisions of this chapter" for "On or before April 1, 1992" at the beginning of Subsection (4); substituted "designation, segregation, management, denials and

appeals" for "segregation, appeals" in Subsection (4)(a); and added Subsection (4)(c), making related changes.

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

Cross-References. — Court record management, Rule 4-201 et seq., Code of Judicial Administration.

Record retention, Appx. F, Code of Judicial Administration.

63-2-703. Applicability to the Legislature.

(1) The Legislature and its staff offices shall designate and classify records in accordance with Sections 63-2-301 through 63-2-304 as public, private, controlled, or protected.

(2) (a) The Legislature and its staff offices are not subject to Section 63-2-203 or to Part 4 or 5 of this chapter.

(b) The Legislature is subject to only the following sections in Part 9 of this chapter: Sections 63-2-902, 63-2-906, and 63-2-909.

(3) The Legislature, through the Legislative Management Committee, shall establish policies to handle requests for records and fees and may establish an appellate board to hear appeals from denials of access.

(4) Policies shall include reasonable times for responding to access requests consistent with the provisions of Part 2 of this chapter, fees, and reasonable time limits for appeals.

(5) Upon request, the state archivist shall:

(a) assist with and advise concerning the establishment of a records management program in the Legislature; and

(b) as required by the Legislature, provide program services similar to those available to the executive branch of government, as provided in this chapter.

History: C. 1953, 63-2-703, enacted by L. 1991, ch. 259, § 37; 1992, ch. 228, § 4; 1992, ch. 280, § 45.

Amendment Notes. — The 1992 amendment by ch. 228 deleted a Subsection (2)(a) designation, added the Subsection (3)(a) designation, redesignated former Subsection (3) as Subsection (4), substituted "and its staff offices

are" for "is" in Subsection (2), and inserted "and fees" in Subsection (3)(a) and "consistent with the provisions of Part 2 of this chapter" and "reasonable" in Subsection (3)(b).

The 1992 amendment by ch. 280, effective July 1, 1992, inserted "designate and" and substituted "controlled" for "confidential" in Subsection (1); divided former Subsection (2)(a)

into present Subsections (2)(a) and (3), added present Subsection (2)(b), and redesignated former Subsection (2)(b) as present Subsection (4); redesignated former Subsection (3) as present Subsection (4); substituted "Section 63-2-203 or to Part 4 or 5" for "Part 4, 5, or 9" in Subsection (2)(a); and inserted "fees" in Subsection (4).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Compiler's Notes. — Laws 1992, ch. 280, § 64, effective July 1, 1992, makes the amendment by ch. 228 effective on July 1, 1992, instead of April 1, 1992, the effective date specified in ch. 228.

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

PART 8 REMEDIES

63-2-801. Criminal penalties.

(1) (a) A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses or provides a copy of a private, controlled, or protected record to any person knowing that such disclosure is prohibited, is guilty of a class B misdemeanor.

(b) It is a defense to prosecution under Subsection (1)(a) that the actor released private, controlled, or protected information in the reasonable belief that the disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.

(c) It is a defense to prosecution under Subsection (1)(a) that the record could have lawfully been released to the recipient if it had been properly classified.

(2) (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any private, controlled, or protected record to which he is not legally entitled is guilty of a class B misdemeanor.

(b) No person shall be guilty under Subsection (2)(a) who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

(3) A public employee who intentionally refuses to release a record the disclosure of which the employee knows is required by law or by final unappealed order from a governmental entity, the records committee, or a court, is guilty of a class B misdemeanor.

History: C. 1953, 63-2-801, enacted by L. 1991, ch. 259, § 38; 1992, ch. 280, § 46.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, rewrote this section.

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

Cross-References. — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

63-2-802. Injunction — Attorneys' fees.

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

(2) (a) A district court may assess against any governmental entity or political subdivision reasonable attorneys' fees and other litigation costs reasonably incurred in connection with a judicial appeal of a denial of a records request if the requester substantially prevails.

(b) In determining whether to award attorneys' fees under this section, the court shall consider:

(i) the public benefit derived from the case;

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

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

(c) Attorneys' fees shall not ordinarily be awarded if the purpose of the litigation is primarily to benefit the requester's financial or commercial interest.

(3) Neither attorneys' fees nor costs shall be awarded for fees or costs incurred during administrative proceedings.

(4) Notwithstanding Subsection (2), a court may only award fees and costs incurred in connection with appeals to district courts under Subsection 63-2-404(2) if the fees and costs were incurred 20 or more days after the requester provided to the governmental entity or political subdivision a statement of position that adequately explains the basis for the requester's position.

(5) Claims for attorneys' fees as provided in this section or for damages are subject to Title 63, Chapter 30, Governmental Immunity Act.

History: C. 1953, 63-2-802, enacted by L. 1991, ch. 259, § 39; 1992, ch. 280, § 47.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, deleted "in law" from the end of Subsection (2)(b)(iii) and substituted "governmental entity or political sub-

division" for "agency" and "adequately explains" for "explained, as fully as possible" in Subsection (4).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-803. No liability for certain decisions of a governmental entity or a political subdivision.

Neither the governmental entity or political subdivision, nor any officer or employee of the governmental entity or political subdivision, is liable for damages resulting from the release of a record where the person or government requesting the record presented evidence of authority to obtain the record even if it is subsequently determined that the requester had no authority.

History: C. 1953, 63-2-803, enacted by L. 1991, ch. 259, § 40; 1992, ch. 280, § 48.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, inserted "or political subdivision" in two places.

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-804. Disciplinary action.

A governmental entity or political subdivision may take disciplinary action which may include suspension or discharge against any employee of the governmental entity or political subdivision who intentionally violates any provision of this chapter.

History: C. 1953, 63-2-804, enacted by L. **Effective Dates.** — Laws 1992, ch. 280, 1992, ch. 280, § 49. § 63 makes the act effective on July 1, 1992.

PART 9

ARCHIVES AND RECORDS SERVICE

63-2-901. Division of Archives and Records Service created — Duties.

(1) There is created the Division of Archives and Records Service within the Department of Administrative Services.

(2) The state archives shall:

(a) administer the state's archives and records management programs, including storage of records, central microphotography programs, and quality control;

(b) apply fair, efficient, and economical management methods to the collection, creation, use, maintenance, retention, preservation, disclosure, and disposal of records and documents;

(c) establish standards, procedures, and techniques for the effective management and physical care of records;

(d) conduct surveys of office operations and recommend improvements in current records management practices, including the use of space, equipment, automation, and supplies used in creating, maintaining, storing, and servicing records;

(e) establish standards for the preparation of schedules providing for the retention of records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, historical, legal, or fiscal value to warrant further retention;

(f) establish, maintain, and operate centralized microphotography lab facilities and quality control for the state;

(g) provide staff and support services to the records committee;

(h) develop training programs to assist records officers and other interested officers and employees of governmental entities to administer this chapter;

(i) provide access to public records deposited in the archives;

(j) provide assistance to any governmental entity in administering this chapter; and

(k) prepare forms for use by all governmental entities for a person requesting access to a record.

(3) The state archives may:

(a) establish a report and directives management program; and

(b) establish a forms management program.

(4) The executive director of the Department of Administrative Services may direct the state archives to administer other functions or services consistent with this chapter.

History: C. 1953, 63-2-901, enacted by L. 1991, ch. 259, § 41; 1992, ch. 280, § 50.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, substituted "use" for "utilization" in Subsection (2)(b), rewrote Subsection (2)(k), which had specified the in-

formation required on the forms, and added "consistent with this chapter" to the end of the section.

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-902. State archivist — Duties.

(1) With the approval of the governor, the executive director of the Department of Administrative Services shall appoint the state archivist to serve as director of the state archives. The state archivist shall be qualified by archival training, education, and experience.

(2) The state archivist is charged with custody of the following:

- (a) the enrolled copy of the Utah constitution;
- (b) the acts and resolutions passed by the Legislature;
- (c) all records kept or deposited with the state archivist as provided by law;
- (d) the journals of the Legislature and all bills, resolutions, memorials, petitions, and claims introduced in the Senate or the House of Representatives; and
- (e) oaths of office of all state officials.

(3) (a) The state archivist is the official custodian of all noncurrent records of permanent or historic value that are not required by law to remain in the custody of the originating governmental entity.

(b) Upon the termination of any governmental entity, its records shall be transferred to the state archives.

History: C. 1953, 63-2-902, enacted by L. 1991, ch. 259, § 42.

Effective Dates. — Laws 1992, ch. 280,

§ 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-903. Duties of governmental entities.

The chief administrative officer of each governmental entity shall:

(1) establish and maintain an active, continuing program for the economical and efficient management of the governmental entity's records as provided by this chapter;

(2) appoint one or more records officers who will be trained to work with the state archives in the care, maintenance, scheduling, disposal, classification, designation, access, and preservation of records;

(3) make and maintain adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the governmental entity designed to furnish information to protect the legal and financial rights of persons directly affected by the entity's activities;

(4) submit to the state archivist proposed schedules of records for final approval by the records committee;

- (5) cooperate with the state archivist in conducting surveys made by the state archivist;
- (6) comply with rules issued by the Department of Administrative Services as provided by Section 63-2-904;
- (7) report to the state archives the designation of record series that it maintains;
- (8) report to the state archives the classification of each record series that is classified; and
- (9) establish and report to the state archives retention schedules for objects that the governmental entity determines are not records under Subsection 63-2-301(18), but that have historical or evidentiary value.

History: C. 1953, 63-2-903, enacted by L. 1991, ch. 259, § 43; 1992, ch. 280, § 51.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, inserted "designation" in Subsection (2) and added Subsections

(7) to (9), making related stylistic changes.

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-904. Rulemaking authority.

(1) The executive director of the Department of Administrative Services, with the recommendation of the state archivist, may make rules as provided by Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement provisions of this chapter dealing with procedures for the collection, storage, designation, classification, access, and management of records.

(2) A governmental entity that includes divisions, boards, departments, committees, commissions, or other subparts that fall within the definition of a governmental entity under this chapter, may, by rule, specify at which level the requirements specified in this chapter shall be undertaken.

History: C. 1953, 63-2-904, enacted by L. 1991, ch. 259, § 44; 1992, ch. 280, § 52.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, added the (1) designation, added Subsection (2), and in Subsection (1) inserted "designation" and deleted

"public, private, confidential, and protected" before "records."

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-905. Records declared property of the state — Disposition.

(1) All records created or maintained by a governmental entity of the state are the property of the state and shall not be mutilated, destroyed, or otherwise damaged or disposed of, in whole or part, except as provided in this chapter.

(2) (a) Except as provided in Subsection (b), all records created or maintained by a political subdivision of the state are the property of the state and shall not be mutilated, destroyed, or otherwise damaged or disposed of, in whole or in part, except as provided in this chapter.

(b) Records which constitute a valuable intellectual property shall be the property of the political subdivision.

(c) The state archives may, upon request from a political subdivision, take custody of any record series of the political subdivision. A political subdivision which no longer wishes to maintain custody of a record which

must be retained under the approved retention schedule shall transfer it to the state archives for safekeeping and management.

(3) It is unlawful for a governmental entity or political subdivision to mutilate, destroy, or otherwise damage or dispose of a record series in contravention of the properly adopted retention schedule.

History: C. 1953, 63-2-905, enacted by L. 1991, ch. 259, § 45; 1992, ch. 280, § 53.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, added the (1) designation and added Subsection (2) and in Sub-

section (1) deleted "transferred, removed," before "or otherwise."

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-906. Certified and microphotographed copies.

(1) Upon demand, the state archives shall furnish certified copies of a record in its exclusive custody that is classified public or that is otherwise determined to be public under this chapter by the originating governmental entity, the records committee, or a court of law. When certified by the state archivist under the seal of the state archives, the copy has the same legal force and effect as if certified by the originating governmental entity.

(2) The state archives may microphotograph records when it determines that microphotography is an efficient and economical way to care, maintain, and preserve the record. A transcript, exemplification, or certified copy of a microphotograph has the same legal force and effect as the original. Upon review and approval of the microphotographed film by the state archivist, the source documents may be destroyed.

(3) The state archives may allow another governmental entity to microphotograph records in accordance with standards set by the state archives.

History: C. 1953, 63-2-906, enacted by L. 1991, ch. 259, § 46; 1992, ch. 280, § 54.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, substituted "governmental entity" for "agency" in the first sentence in Subsection (1).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-907. Right to replevin.

To secure the safety and preservation of records, the state archivist or his representative may examine all records. On behalf of the state archivist, the attorney general may replevin any records that are not adequately safeguarded.

History: C. 1953, 63-2-907, enacted by L. 1991, ch. 259, § 47.

Effective Dates. — Laws 1992, ch. 280,

§ 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-908. Report on management of government records.

(1) The state archives shall provide for public inspection of the title and a summary description of each record series.

(2) On or before June 1 of each year, the state archives shall prepare a report for the Legislature and governor which shall contain:

(a) a summary description of each ordinance enacted in compliance with Section 63-2-701 and any report of noncompliance with this chapter; and

(b) a summary list of other sections in the code that contain provisions for the collection, storage, classification, designation, access, or management of government records.

History: C. 1953, 63-2-908, enacted by L. 1991, ch. 259, § 48; 1992, ch. 280, § 55.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, deleted the former first sentence of Subsection (1), which read "On or before June 1 of each year, beginning June 1, 1993, the state archives shall prepare a report for the Legislature and governor containing the title and a summary description of each record series containing data on individuals"

and deleted "that does not contain data on individuals" from the end of the remaining sentence and, in Subsection (2), substituted the present introductory language for "The report also shall contain," added the (a) designation, and added Subsection (b).

Effective Dates. — Laws 1992, ch. 280, § 63 makes L. 1991, ch. 259 effective July 1, 1992.

63-2-909. Records made public after 75 years.

(1) The classification of a record is not permanent and a record that was not classified public under this act shall become a public record when the justification for the original or any subsequent restrictive classification no longer exists. A record shall be presumed to be public 75 years after its creation, except that a record that contains information about an individual 21 years old or younger at the time of the record's creation shall be presumed to be public 100 years after its creation.

(2) Subsection (1) does not apply to records of unclaimed property held by the state treasurer in accordance with Title 78, Chapter 44, Uniform Unclaimed Property Act.

History: C. 1953, 63-2-909, enacted by L. 1991, ch. 259, § 49.

§ 63 makes L. 1991, ch. 259 effective July 1, 1992.

Effective Dates. — Laws 1992, ch. 280,

CHAPTER 3

DEPARTMENT OF PUBLICITY AND INDUSTRIAL DEVELOPMENT

(Repealed by Laws 1953, ch. 123, § 15.)

63-3-1 to 63-3-17. Repealed.

Repeals. — Sections 63-3-1 to 63-3-17, enacted by Laws 1941, ch. 75, §§ 1 to 13 and

§§ 18 to 20, relating to the creation, powers and functions of the Department of Publicity