Utah Code 63G-2

Government Records Access and Management Act

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Utah State Archives and Records Service

Government Records Access and Management Act

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Contents

Part 1. General Provisions 4
63G-2-101. Title. 4
63G-2-102. Legislative intent. 4
63G-2-103. Definitions. 4
63G-2-104. Administrative Procedures Act not applicable. 9
63G-2-105. Confidentiality agreements. 9
63G-2-106. Records of security measures. 9
63G-2-107. Disclosure of records subject to federal law. 9
63G-2-108. Certification of records officer. 9

Part 2. Access to Records 10
63G-2-201 Right to inspect records and receive copies of records. 10
63G-2-202 Access to private, controlled, and protected documents. 12
63G-2-203. Fees. 14
63G-2-204. Requests -- Time limit for response and extraordinary circumstances. 16
63G-2-205. Denials. 18
63G-2-206. Sharing records. 18
63G-2-207. Subpoenas -- Court ordered disclosure for discovery. 20
63G-2-208. Public repository of legislative email. 20

Part 3. Classification 22
63G-2-301. Public records. 22
63G-2-302. Private records. 24
63G-2-303. Private information concerning certain government employees. 26
63G-2-304. Controlled records. 28
63G-2-305. Protected records. 28
63G-2-306. Procedure to determine classification. 34
63G-2-307. Duty to evaluate records and make designations and classifications. 34
63G-2-308. Segregation of records. 34
63G-2-309. Confidentiality claims. 35
63G-2-310. Records made public after 75 years. 36
63G-2-400.5. Definitions. 36

Part 4. Appeals 37
63G-2-401. Appeal to chief administrative officer -- Notice of the decision of the appeal. 37
63G-2-402. Appealing a decision of a chief administrative officer. 39
63G-2-403. Appeals to the records committee. 39
63G-2-404. Judicial review. 42
63G-2-405. Confidential treatment of records for which no exemption applies. 43
63G-2-406. Evidentiary standards for release of certain enforcement and litigation records. 43

Part 5. State Records Committee 45
63G-2-501. State Records Committee created -- Membership -- Terms -- Vacancies -- Expenses. 45
63G-2-502. State Records Committee -- Duties. 45

Part 6. Collection of Information and Accuracy of Records 47
63G-2-601. Rights of individuals on whom data is maintained -- Classification statement -- Notice to provider of information. 47
63G-2-602. Disclosure to subject of records -- Context of use. 47
63G-2-603. Requests to amend a record -- Appeals. 47
63G-2-604. Retention and disposition of records. 48

Part 7. Applicability to Political Subdivisions, the Judiciary, and the Legislature 49
63G-2-701. Political subdivisions may adopt ordinances in compliance with chapter -- Appeal process. 49
63G-2-702. Applicability to the judiciary. 50
63G-2-703. Applicability to the Legislature. 51

Part 8. Remedies 52
63G-2-801. Criminal penalties. 52
63G-2-802. Injunction -- Attorney fees. 52
63G-2-803. No individual liability for certain decisions of a governmental entity. 53
63G-2-804. Violation of provision of chapter -- Penalties for intentional mutilation or destruction -- Disciplinary action. 53

Part 9. Public Associations 54
63G-2-901. Definitions -- Public associations subject to act. 54

Part 1. General Provisions

63G-2-101. Title.

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

Renumbered and Amended by Chapter 382, 2008 General Session

63G-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.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-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:
- (a) the time and general nature of police, fire, and paramedic calls made to the agency; and
- (b) 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 63G-2-201(3)(b).

(4) (a) "Computer program" means:
- (i) 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

(ii) 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 63G-2-304.

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

(9) "Explosive" means a chemical compound, device, or mixture:

(a) commonly used or intended for the purpose of producing an explosion; and

(b) that contains oxidizing or combustive units or other ingredients in proportions, quantities, or packing so that:

(i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases; and

(ii) the resultant gaseous pressures are capable of:

(A) producing destructive effects on contiguous objects; or

(B) causing death or serious bodily injury.

(10) "Government audit agency" means any governmental entity that conducts an audit.

(11) (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 and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, 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 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

(b) "Governmental entity" also means:

(i) every office, agency, board, bureau, committee, department, advisory board, or

commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business; and

(ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking.

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

(iv) an association as defined in Section 53A-1-1601.

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

(12) "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.

(13) "Individual" means a human being.

(14) (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 (14)(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 63G-2-201(3)(b).

(15) "Legislative body" means the Legislature.

(16) "Notice of compliance" means a statement confirming that a governmental entity has complied with a records committee order.

(17) "Person" means:

(a) an individual;

(b) a nonprofit or profit corporation;

(c) a partnership;

(d) a sole proprietorship;

(e) other type of business organization; or

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

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

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

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

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

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

(i) that is 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) a personal note or personal communication prepared or received by an employee or officer of a governmental entity:

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

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

(ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;

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

(iv) material 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;

(v) proprietary software;

(vi) junk mail or a commercial publication received by a governmental entity or an official or employee of a governmental entity;

(vii) a book that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public;

(viii) material that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public, regardless of physical form or characteristics of the material;

(ix) a daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working;

(x) a computer program that is developed or purchased by or for any governmental entity for its own use;

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

(A) a member of the judiciary;

(B) an administrative law judge;

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

(D) a member of any other body charged by law with performing a quasi-judicial function;

(xii) a telephone number or similar code used to access a mobile communication device that is used by an employee or officer of a governmental entity, provided that the employee or officer of the governmental entity has designated at least one business telephone number that is a public record as provided in Section 63G-2-301;

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

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

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

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

(24) "Records committee" means the State Records Committee created in Section 63G-2-501.

(25) "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.

(26) "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.

(27) "Sponsored research" means research, training, and other sponsored activities as defined by the

federal Executive Office of the President, Office of Management and Budget:

(a) conducted:

(i) by an institution within the state system of higher education defined in Section 53B-1-102; and

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

(b) funded or otherwise supported by an external:

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

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

(28) "State archives" means the Division of Archives and Records Service created in Section 63A-12-101.

(29) "State archivist" means the director of the state archives.

(30) "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.

Amended by Chapter 265, 2015 General Session

Amended by Chapter 441, 2017 General Session

63G-2-104. Administrative Procedures Act not applicable.
Title 63G, Chapter 4, Administrative Procedures Act, does not apply to this chapter except as provided in Section 63G-2-603.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-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.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-106. Records of security measures.
The records of a governmental entity or political subdivision regarding security measures designed for the protection of persons or property, public or private, are not subject to this chapter. These records include:
(1) security plans;
(2) security codes and combinations, and passwords;
(3) passes and keys;
(4) security procedures; and
(5) building and public works designs, to the extent that the records or information relate to the ongoing security measures of a public entity.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-107. Disclosure of records subject to federal law.
(1) Notwithstanding Subsection 63G-2-201(6), this chapter does not apply to a record containing protected health information as defined in 45 C.F.R., Part 164, Standards for Privacy of Individually Identifiable Health Information, if the record is:
(a) controlled or maintained by a governmental entity; and
(b) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information.
(2) The disclosure of an education record as defined in the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99, that is controlled or maintained by a governmental entity shall be governed by the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

Amended by Chapter 380, 2016 General Session

63G-2-108. Certification of records officer.
Each records officer of a governmental entity or political subdivision shall, on an annual basis, successfully complete online training and obtain certification from state archives in accordance with Section 63A-12-110.

Enacted by Chapter 377, 2012 General Session

Part 2. Access to Records

63G-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 63G-2-203 and 63G-2-204.

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

(3) The following records are not public:

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

(b) a record 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 a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or 63G-2-305 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), Subsection (5)(c), Section 63G-2-202, 63G-2-206, or 63G-2-303.

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

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

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

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

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

(A) is mutually beneficial to:

(I) the subject of the record;

(II) the governmental entity; and

(III) the public; and

(B) serves a public purpose related to:

(I) public safety; or

(II) consumer protection; and

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

(6)

(a) The disclosure of a record to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including a record 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 (6)(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) In response to a request, a governmental entity is not required to:

(i) create a record;

(ii) compile, format, manipulate, package, summarize, or tailor information;
(iii) provide a record in a particular format, medium, or program not currently maintained by the governmental entity;
(iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or
(v) fill a person's records request if:
(A) the record requested is accessible in the identical physical form and content in a public publication or product produced by the governmental entity receiving the request;
(B) the governmental entity provides the person requesting the record with the public publication or product; and
(C) the governmental entity specifies where the record can be found in the public publication or product.

(b) Upon request, a governmental entity may provide a record in a particular form under Subsection (8)(a)(ii) or (iii) if:
(i) the governmental entity determines it 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 providing the record in the requested form in accordance with Section 63G-2-203.

(9)
(a) Notwithstanding any other provision of this chapter, and subject to Subsection (9)(b), a governmental entity is not required to respond to, or provide a record in response to, a record request if the request is submitted by or in behalf of an individual who is confined in a jail or other correctional facility following the individual's conviction.
(b) Subsection (9)(a) does not apply to:
(i) the first five record requests submitted to the governmental entity by or in behalf of an individual described in Subsection (9)(a) during any calendar year requesting only a record that contains a specific reference to the individual; or
(ii) a record request that is submitted by an attorney of an individual described in Subsection (9)(a).

(10)
(a) A governmental entity may allow a person requesting more than 50 pages of records to copy the records if:
(i) the records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and
(ii) the governmental entity provides reasonable safeguards to protect the public from the potential for loss of a public record.
(b) If the requirements of Subsection (10)(a) are met, the governmental entity may:
(i) provide the requester with the facilities for copying the requested records and require that the requester make the copies; or
(ii) allow the requester to provide the requester's own copying facilities and personnel to make the copies at the governmental entity's offices and waive the fees for copying the records.

(11)
(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.

(12) 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 a person to inspect and receive a copy of a record

under this chapter.

(13) Subject to the requirements of Subsection (8), a governmental entity shall provide access to an electronic copy of a record in lieu of providing access to its paper equivalent if:
(a) the person making the request requests or states a preference for an electronic copy;
(b) the governmental entity currently maintains the record in an electronic format that is reproducible and may be provided without reformatting or conversion; and
(c) the electronic copy of the record:
(i) does not disclose other records that are exempt from disclosure; or
(ii) may be segregated to protect private, protected, or controlled information from disclosure without the undue expenditure of public resources or funds.
(14) In determining whether a record is properly classified as private under Subsection 63G-2-302(2)(d), the governmental entity, State Records Committee, local appeals board, or court shall consider and weigh:
(a) any personal privacy interests, including those in images, that would be affected by disclosure of the records in question; and
(b) any public interests served by disclosure.

Amended by Chapter 435, 2017 General Session

63G-2-202 Access to private, controlled, and protected documents.
(1) Upon request, and except as provided in Subsection (11)(a), 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;
(ii) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or
(iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a health care provider, as defined in Section 26-33a-102, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or
(e) any person to whom the record must be provided pursuant to:
(i) court order as provided in Subsection (7); or
(ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.
(2)
(a) Upon request, a governmental entity shall disclose a controlled record to:
(i) a physician, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:
(A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and
(B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and
(ii) any person to whom the record must be disclosed pursuant to:
(A) a court order as provided in Subsection (7); or
(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.
(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, and except as provided in Subsection (10) or (11)(b), a governmental entity shall disclose a protected record to:

(a) the person that 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;

(c) any person to whom the record must be provided pursuant to:

(i) a court order as provided in Subsection (7); or

(ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; or

(d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).

(5) A governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, state, the United States, or a foreign government only as provided by Section 63G-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;

(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of private or controlled records;

(ii) business confidentiality interests in the case of records protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

(iii) 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, are greater than or equal to the interests favoring restriction of access; and

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

(8)

(a) Except as provided in Subsection (8)(d), 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:

(A) the proposed research is bona fide; and

(B) the value of the research is greater than or equal to the infringement upon personal privacy;

(iii)

(A) requires the researcher to assure the integrity, confidentiality, and security of the records; and

(B) 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:

(A) disclosing the record in individually identifiable form, except as provided in Subsection (8)(b); or
(B) using the record for purposes other than the research approved by the governmental entity; and
(v) secures from the researcher a written statement of the researcher's understanding of and agreement to the conditions of this Subsection (8) and the researcher's understanding that violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution under Section 63G-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 (8).
(d) A governmental entity may not disclose or authorize disclosure of a private record for research purposes as described in this Subsection (8) if the private record is a record described in Subsection 63G-2-302(1)(u).

(9)
(a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity may disclose to persons other than those specified in this section records that are:
(i) private under Section 63G-2-302; or
(ii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.
(b) Under Subsection 63G-2-403(11)(b), the records committee may require the disclosure to persons other than those specified in this section of records that are:
(i) private under Section 63G-2-302;
(ii) controlled under Section 63G-2-304; or
(iii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.
(c) Under Subsection 63G-2-404(7), the court may require the disclosure of records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected under Section 63G-2-305 to persons other than those specified in this section.

(10) A record contained in the Management Information System, created in Section 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be disclosed to any person except the person who is alleged in the report to be a perpetrator of abuse, neglect, or dependency.

(11)
(a) A private record described in Subsection 63G-2-302(2)(f) may only be disclosed as provided in Subsection (1)(e).
(b) A protected record described in Subsection 63G-2-305(43) may only be disclosed as provided in Subsection (4)(c) or Section 62A-3-312.

(12)
(a) A private, protected, or controlled record described in Section 62A-16-301 shall be disclosed as required under:
(i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and
(ii) Subsections 62A-16-302(1) and (6).
(b) A record disclosed under Subsection (12)(a) shall retain its character as private, protected, or controlled.

Amended by Chapter 348, 2016 General Session

63G-2-203. Fees.

(1) A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of providing a record. This fee shall be approved by the governmental entity's executive officer.

(2)
(a) When a governmental entity compiles a record in a form other than that normally maintained by the governmental entity, the actual costs under this section may include the following:
(i) the cost of staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;
(ii) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request; and
(iii) in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users, and the administrative costs as set forth in Subsections (2)(a)(i) and (ii).
(b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request.
(c) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first quarter hour of staff time.
(3)
(a) Fees shall be established as provided in this Subsection (3).
(b) A governmental entity with fees established by the Legislature:
(i) shall establish the fees defined in Subsection (2), or other actual costs associated with this section through the budget process; and
(ii) may use the procedures of Section 63J-1-504 to set fees until the Legislature establishes fees through the budget process.
(c) Political subdivisions shall establish fees by ordinance or written formal policy adopted by the governing body.
(d) The judiciary shall establish fees by rules of the judicial council.
(4) A governmental entity may fulfill a record request without charge and is encouraged to do so if 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 63G-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.
(5) A governmental entity may not charge a fee for:
(a) reviewing a record to determine whether it is subject to disclosure, except as permitted by Subsection (2)(a)(ii); or
(b) inspecting a record.
(6)
(a) A person who believes that there has been an unreasonable denial of a fee waiver under Subsection (4) may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under Section 63G-2-205.
(b) The adjudicative body hearing the appeal:
(i) shall review the fee waiver de novo, but shall review and consider the governmental entity's denial of the fee waiver and any determination under Subsection (4); and
(ii) has the same authority when a fee waiver or reduction is denied as it has when the inspection of a public record is denied.
(7)
(a) All fees received under this section by a governmental entity subject to Subsection (3)(b) 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.
(8)

(a) A governmental entity may require payment of past fees and future estimated fees before beginning to process a request if:
(i) fees are expected to exceed $50; or
(ii) the requester has not paid fees from previous requests.
(b) Any prepaid amount in excess of fees due shall be returned to the requester.
(9) This section does not alter, repeal, or reduce fees established by other statutes or legislative acts.
(10)
(a) Notwithstanding Subsection (3)(c), fees for voter registration records shall be set as provided in this Subsection (10).
(b) The lieutenant governor shall:
(i) after consultation with county clerks, establish uniform fees for voter registration and voter history records that meet the requirements of this section; and
(ii) obtain legislative approval of those fees by following the procedures and requirements of Section 63J-1-504.

Amended by Chapter 90, 2016 General Session

63G-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:
(a) the person's name, mailing address, and daytime telephone number, if available; and
(b) a description of the record requested that identifies the record with reasonable specificity.
(2)
(a) Subject to Subsection (2)(b), a person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record.
(b) In response to a request for a record, a governmental entity may not provide a record that it has received under Section 63G-2-206 as a shared record if the record was shared for the purpose of auditing, if the governmental entity is authorized by state statute to conduct an audit.
(c) If a governmental entity is prohibited from providing a record under Subsection (2)(b), it shall:
(i) deny the records request; and
(ii) inform the person making the request that records requests must be submitted to the governmental entity that prepares, owns, or retains the record.
(d) A governmental entity may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.
(3) After receiving a request for a record, a governmental entity shall:
(a) review each request that seeks an expedited response and notify, within five business days after receiving the request, each requester that has not demonstrated that their record request benefits the public rather than the person that their response will not be expedited; and
(b) as soon as reasonably possible, but no later than 10 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:
(i) approve the request and provide a copy of the record;
(ii) deny the request in accordance with the procedures and requirements of Section 63G-2-205;
(iii) notify the requester that it does not maintain the record requested and provide, if known, the name and address of the governmental entity that does maintain the record; or
(iv) notify the requester that because of one of the extraordinary circumstances listed in Subsection (5), it cannot immediately approve or deny the request, and include with the notice:

(A) a description of the circumstances that constitute the extraordinary circumstances; and
(B) the date when the records will be available, consistent with the requirements of Subsection (6).

(4) 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.

(5) 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 (6) 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)

(i) the request is for a voluminous quantity of records or a record series containing a substantial number of records; or

(ii) the requester seeks a substantial number of records or records series in requests filed within five working days of each other;

(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.

(6) If one of the extraordinary circumstances listed in Subsection (5) 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 (5)(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 (5)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;

(c) for claims under Subsections (5)(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;

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

(iv) for any person that does not establish a right to an expedited response as authorized by Subsection (3), a governmental entity may choose to:

(A) require the person to provide for copying of the records as provided in Subsection 63G-2-201(10); or

(B) treat a request for multiple records as separate record requests, and respond sequentially to each request;

(d) for claims under Subsection (5)(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 (5)(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 (5)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.

(7)

(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.

(8) 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 record.

Amended by Chapter 435, 2017 General Session

63G-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 63G-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 63G-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.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-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;

(d) is one that collects information for presentence, probationary, or parole purposes; or

(e)

(i) is:

(A) the Legislature;

(B) a legislative committee;

(C) a member of the Legislature; or

(D) a legislative staff member acting at the request of the Legislature, a legislative committee, or a member of the Legislature; and

(ii) requests the record in relation to the Legislature's duties including:

(A) the preparation or review of a legislative proposal or legislation;

(B) appropriations; or
(C) an investigation or review conducted by the Legislature or a legislative committee.

(2)
(a) A governmental entity may provide a private, controlled, or protected 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:
(i) that the record or record series is necessary to the performance of the governmental entity's duties and functions;
(ii) 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
(iii) that the use of the record or record series produces a public benefit that is greater than or equal to the individual privacy right that protects the record or record series.
(b) A governmental entity may provide a private, controlled, or protected record or record series to a contractor or a private provider according to the requirements of Subsection (6)(b).

(3)
(a) 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:
(i) is entitled by law to inspect the record;
(ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or
(iii) is an entity described in Subsection (1)(a), (b), (c), (d), or (e).
(b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection 63G-2-305(4).

(4) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, a foreign government, or to a contractor or private provider, 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.

(5) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1) and (2) without complying with the procedures of Subsection (2) or (4) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

(6)
(a) Subject to Subsections (6)(b) and (c), an entity receiving a record under this section is subject to the same restrictions on disclosure of the record as the originating entity.
(b) A contractor or a private provider may receive information under this section only if:
(i) the contractor or private provider's use of the record or record series produces a public benefit that is greater than or equal to the individual privacy right that protects the record or record series;
(ii) the record or record series it requests:
(A) is necessary for the performance of a contract with a governmental entity;
(B) will only be used for the performance of the contract with the governmental entity;
(C) will not be disclosed to any other person; and
(D) will not be used for advertising or solicitation purposes; and
(iii) the contractor or private provider gives written assurance to the governmental entity that is providing the record or record series that it will adhere to the restrictions of this Subsection (6)(b).

(c) The classification of a record already held by a governmental entity and the applicable restrictions on disclosure of that record are not affected by the governmental entity's receipt under this section of a record with a different classification that contains information that is also included in the previously held record.

(7) 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.

(8) The following records may not be shared under this section:

(a) 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;

(b) records of publicly funded libraries as described in Subsection 63G-2-302(1)(c); and

(c) a record described in Section 63G-12-210.

(9) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

Amended by Chapter 377, 2012 General Session

63G-2-207. Subpoenas -- Court ordered disclosure for discovery.

(1) 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 63G-2-204.

(2)

(a)

(i) Except as otherwise provided in Subsection (2)(c), in judicial or administrative proceedings in which an individual is requesting discovery of records classified private, controlled, or protected under this chapter, or otherwise restricted from access by other statutes, the court, or an administrative law judge shall follow the procedure in Subsection 63G-2-202(7) before ordering disclosure.

(ii) Until the court or an administrative law judge orders disclosure, these records are privileged from discovery.

(b) If, the court or administrative order requires disclosure, the terms of the order may limit the requester's further use and disclosure of the record in accordance with Subsection 63G-2-202(7), in order to protect the privacy interests recognized in this chapter.

(c) Unless a court or administrative law judge imposes limitations in a restrictive order, this section does not limit the right to obtain:

(i) records through the procedures set forth in this chapter; or

(ii) medical records discoverable under state or federal court rules as authorized by Subsection 63G-2-302(3).

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-208. Public repository of legislative email.

(1) As used in this section, "repository" means the repository of email described in Subsection (2).

(2)

(a) On or before January 1, 2014, the Legislature shall post on its website a publicly accessible repository containing email that legislators transfer to it as provided in this section.

(b) The repository shall be searchable by sender, receiver, and subject.

(3) A legislator may transfer to the repository an email that the legislator sent or received.

(4) An email in the repository may be removed from the repository if:

(a) the email was accidentally transferred to the repository;

(b) it is determined that the email is not a record or that the email is a private, protected, or controlled record;

(c) the email is deleted pursuant to the Legislature's record retention policy; or

(d) for an email that is not removed from the repository earlier under Subsection (4)(a), (b), or

(c), at least two years have passed after the day the legislator first sent or received the email.

(5) A legislator's failure to transfer an email to the repository does not alone mean that the email is a private, protected, or controlled record.

Enacted by Chapter 231, 2013 General Session

Part 3. Classification

63G-2-301. Public records.

(1) As used in this section:

(a) "Business address" means a single address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(b) "Business email address" means a single email address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(c) "Business telephone number" means a single telephone number of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

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

(a) laws;

(b) the name, gender, gross compensation, job title, job description, business address, business email address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of a current or former employee or officer of the governmental entity, 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 Subsection 63G-2-305(17) or (18);

(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 Act, 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) unless otherwise classified as private under Section 63G-2-303, records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, 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;

(k) summary data;

(l) voter registration records, including an individual's voting history, except for a voter registration record or those parts of a voter registration record that are classified as private under Subsection 63G-2-302(1)(j) or (k);

(m) for an elected official, as defined in Section 11-47-102, a telephone number, if available, and email address, if available, where that elected official may be reached as required in Title 11, Chapter 47, Access to Elected Officials;
(n) for a school community council member, a telephone number, if available, and email address, if available, where that elected official may be reached directly as required in Section 53A-1a-108.1;
(o) annual audited financial statements of the Utah Educational Savings Plan described in Section 53B-8a-111; and
(p) an initiative packet, as defined in Section 20A-7-101, and a referendum packet, as defined in Section 20A-7-101, after the packet is submitted to a county clerk.

(3) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b), Section 63G-2-302, 63G-2-304, or 63G-2-305:
(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 63G-2-305(35);
(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 charges on which the disciplinary action was based were sustained;

(p) records maintained by the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, 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 63G-4-201, 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.

(4) The list of public records in this section is not exhaustive and should not be used to limit access to records.

Amended by Chapter 373, 2014 General Session

63G-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 by or generated by or for:
(i) the Independent Legislative Ethics Commission, except for:
(A) the commission's summary data report that is required under legislative rule; and
(B) any other document that is classified as public under legislative rule; or
(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;
(e) records received by, or generated by or for, the Independent Executive Branch Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review of Executive Branch Ethics Complaints;
(f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:
(i) if, prior to the meeting, the chair of the committee determines release of the records:
(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or
(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and
(ii) after the meeting, if the meeting was closed to the public;
(g) employment 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;
(h) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;
(i) that part of a record indicating a person's social security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;
(j) that part of a voter registration record identifying a voter's:
(i) driver license or identification card number;
(ii) Social Security number, or last four digits of the Social Security number;
(iii) email address; or

(iv) date of birth;

(k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);

(l) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(m) information provided to the Commissioner of Insurance under:

(i) Subsection 31A-23a-115(3)(a);

(ii) Subsection 31A-23a-302(4); or

(iii) Subsection 31A-26-210(4);

(n) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

(o) information provided by an offender that is:

(i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap Offender Registry or Title 77, Chapter 43, Child Abuse Registry; and

(ii) not required to be made available to the public under Subsection 77-41-110(4) or 77-43-108(4);

(p) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;

(q) electronic toll collection customer account information received or collected under Section 72-6-118 and customer information described in Section 17B-2a-815 received or collected by a public transit district, including contact and payment information and customer travel data;

(r) an email address provided by a military or overseas voter under Section 20A-16-501;

(s) a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act;

(t) records received by or generated by or for the Political Subdivisions Ethics Review Commission established in Section 11-49-201, except for:

(i) the commission's summary data report that is required in Section 11-49-202; and

(ii) any other document that is classified as public in accordance with Title 11, Chapter 49, Political Subdivisions Ethics Review Commission;

(u) a record described in Subsection 53A-11a-203(3) that verifies that a parent was notified of an incident or threat; and

(v) a criminal background check or credit history report conducted in accordance with Section 63A-3-201.

(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 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63G-2-301(2);

(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;
(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;
(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; and
(g) audio and video recordings created by a body-worn camera, as defined in Section 77-7a-103, that record sound or images inside a home or residence except for recordings that:
(i) depict the commission of an alleged crime;
(ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;
(iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;
(iv) contain an officer involved critical incident as defined in Section 76-2-408(1)(d); or
(v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

(3)
(a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.
(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:
(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or
(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.
(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Amended by Chapter 168, 2017 General Session
Amended by Chapter 282, 2017 General Session

63G-2-303. Private information concerning certain government employees.
(1) As used in this section:
(a) "At-risk government employee" means a current or former:
(i) peace officer as specified in Section 53-13-102;
(ii) supreme court justice;
(iii) judge of an appellate, district, or juvenile court, or a court commissioner;
(iv) justice court judge;
(v) judge authorized by Title 39, Chapter 6, Utah Code of Military Justice;
(vi) federal judge;
(vii) federal magistrate judge;
(viii) judge authorized by Armed Forces, Title 10, United States Code;
(ix) United States Attorney;
(x) Assistant United States Attorney;
(xi) a prosecutor appointed pursuant to Armed Forces, Title 10, United States Code;
(xii) a law enforcement official as defined in Section 53-5-711; or
(xiii) a prosecutor authorized by Title 39, Chapter 6, Utah Code of Military Justice.
(b) "Family member" means the spouse, child, sibling, parent, or grandparent of an at-risk

government employee who is living with the employee.

(2)

(a) Pursuant to Subsection 63G-2-302(1)(h), an at-risk government employee may file a written application that:

(i) gives notice of the employee's status to each agency of a government entity holding a record or a part of a record that would disclose the employee's or the employee's family member's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions; and

(ii) requests that the government agency classify those records or parts of records private.

(b) An at-risk government employee desiring to file an application under this section may request assistance from the government agency to identify the individual records containing the private information specified in Subsection (2)(a)(i).

(c) Each government agency shall develop a form that:

(i) requires the at-risk government employee to provide evidence of qualifying employment;

(ii) requires the at-risk government employee to designate each specific record or part of a record containing the employee's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions that the applicant desires to be classified as private; and

(iii) affirmatively requests that the government entity holding those records classify them as private.

(3) A county recorder, county treasurer, county auditor, or a county tax assessor may fully satisfy the requirements of this section by:

(a) providing a method for the assessment roll and index and the tax roll and index that will block public access to the home address, home telephone number, situs address, and Social Security number; and

(b) providing the at-risk government employee requesting the classification with a disclaimer informing the employee that the employee may not receive official announcements affecting the employee's property, including notices about proposed annexations, incorporations, or zoning modifications.

(4) A government agency holding records of an at-risk government employee classified as private under this section may release the record or part of the record if:

(a) the employee or former employee gives written consent;

(b) a court orders release of the records; or

(c) the government agency receives a certified death certificate for the employee or former employee.

(5)

(a) If the government agency holding the private record receives a subpoena for the records, the government agency shall attempt to notify the at-risk government employee or former employee by mailing a copy of the subpoena to the employee's last-known mailing address together with a request that the employee either:

(i) authorize release of the record; or

(ii) within 10 days of the date that the copy and request are mailed, deliver to the government agency holding the private record a copy of a motion to quash filed with the court who issued the subpoena.

(b) The government agency shall comply with the subpoena if the government agency has:

(i) received permission from the at-risk government employee or former employee to comply with the subpoena;

(ii) not received a copy of a motion to quash within 10 days of the date that the copy of the subpoena was mailed; or

(iii) received a court order requiring release of the records.

Amended by Chapter 426, 2013 General Session

63G-2-304. 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.

Renumbered and Amended by Chapter 382, 2008 General Session

Effective 7/1/2017

63G-2-305. 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 63G-2-309;

(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 information 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 63G-2-309;

(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) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

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

(6) 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, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties, a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

(a) an invitation for bids;

(b) a request for proposals;

(c) a request for quotes;

(d) a grant; or

(e) other similar document;

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

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

(b)

(i) a final determination is made not to enter into a contract that relates to the subject of

the request for information; and

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

(8) 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 is greater than or equal to 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;

(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; or

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

(9) 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 is greater than or equal to 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;

(10) 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;

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

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

(13) 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;

(14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, 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;

(15) 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;

(16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;
(17) records that are subject to the attorney client privilege;
(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;
(19)
(a)
(i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and
(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and
(b)
(i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:
(A) members of a legislative body;
(B) a member of a legislative body and a member of the legislative body's staff; or
(C) members of a legislative body's staff; and
(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;
(20)
(a) 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; and
(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;
(21) 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;
(22) drafts, unless otherwise classified as public;
(23) records concerning a governmental entity's strategy about:
(a) collective bargaining; or
(b) imminent or pending litigation;
(24) 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;
(25) 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;
(26) 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;
(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;
(28) records of an institution within the state system of higher education defined in Section 53B-1-102 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 Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;
(29) 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;

(30) 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;

(31) 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;

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

(33) 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;

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

(35) 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;

(36) 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;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, 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 (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, 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 the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

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

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

(40)

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

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

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

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41)
(a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and
(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:
(a) a production facility; or
(b) a magazine;

(43) information:
(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or
(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:
(a) the safety of the general public; or
(b) the security of:
(i) governmental property;
(ii) governmental programs; or
(iii) the property of a private person who provides the Division of Emergency Management information;

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

(50) as provided in Section 26-39-501:
(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and
(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:
(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and
(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:
(i) the nature of the law, ordinance, rule, or order; and

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

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

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

(b) conducted using animals;

(53) an initial proposal under Title 63N, Chapter 13, Part 2, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;

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

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

(56) records contained in the Management Information System created in Section 62A-4a-1003;

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

(58) information requested by and provided to the 911 Division under Section 63H-7a-302;

(59) in accordance with Section 73-10-33:

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

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

(60) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

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

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

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

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

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

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

(62) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsection 58-68-304(3) or (4);

(63) a record described in Section 63G-12-210;

(64) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003; and

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

(a) a victim's application or request for benefits;

(b) a victim's receipt or denial of benefits; and

(c) any administrative notes or records made or created for the purpose of, or used to, evaluate or

communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund.

(66) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in Subsection 62A-2-101(19)(a)(vi), except for recordings that:

(a) depict the commission of an alleged crime;

(b) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(d); or

(e) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording; and

(67) a record pertaining to the search process for a president of an institution of higher education described in Section 53B-2-102, except for application materials for a publicly announced finalist.

Amended by Chapter 374, 2017 General Session
Amended by Chapter 382, 2017 General Session
Amended by Chapter 415, 2017 General Session

63G-2-306. 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 63G-2-302(2), Section 63G-2-304, or 63G-2-305 requires a governmental entity to classify a record as private, controlled, or protected.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-307. 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 Title 63A, Chapter 12, Public Records Management Act; 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.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-308. 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 63G-2-205.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-309. Confidentiality claims.

(1)

(a)

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

(A) a written claim of business confidentiality; and

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

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

(A) a person;

(B) a federal governmental entity;

(C) a state governmental entity; or

(D) a local governmental entity.

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

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

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

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

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

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

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

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

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

Amended by Chapter 445, 2013 General Session

63G-2-310. 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 67, Chapter 4a, Unclaimed Property Act.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 4. Appeals

63G-2-400.5. Definitions.

As used in this part:

(1) "Access denial" means a governmental entity's denial, under Subsection 63G-2-204(8) or Section 63G-2-205, in whole or in part, of a record request.

(2) "Appellate affirmation" means a decision of a chief administrative officer, local appeals board, or records committee affirming an access denial.

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

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

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

(6) "Records committee appellant" means:

(a) a political subdivision that seeks to appeal a decision of a local appeals board to the records committee; or

(b) a requester or interested party who seeks to appeal to the records committee a decision affirming an access denial.

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

Enacted by Chapter 335, 2015 General Session

63G-2-401. Appeal to chief administrative officer -- Notice of the decision of the appeal.

(1)

(a) A requester or interested party may appeal an access denial to the chief administrative officer of the governmental entity by filing a notice of appeal with the chief administrative officer within 30 days after:

(i) the governmental entity sends a notice of denial under Section 63G-2-205, if the governmental entity denies a record request under Subsection 63G-2-205(1); or

(ii) the record request is considered denied under Subsection 63G-2-204(8), if that subsection applies.

(b) If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63G-2-204(3), and, if the requester believes the extraordinary circumstances do not exist or that the date specified is unreasonable, the requester may appeal the governmental entity's claim of extraordinary circumstances or date for compliance to the chief administrative officer by filing a notice of appeal with the chief administrative officer 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 63G-2-204(8).

(2) A notice of appeal shall contain:

(a) the name, mailing address, and daytime telephone number of the requester or interested party; and

(b) the relief sought.

(3) The requester or interested party 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 63G-2-309, the chief administrative officer shall:

(i) send notice of the 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 or interested party within three business days after receiving notice of the appeal.

(b) The business confidentiality 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 decision on the appeal within:

(i)

(A) 10 business days after the chief administrative officer's receipt of the notice of appeal; or

(B) five business days after the chief administrative officer's receipt of the notice of appeal, if the requester or interested party demonstrates that an expedited decision benefits the public rather than the requester or interested party; or

(ii) 12 business days after the governmental entity sends the notice of appeal to a person who submitted a claim of business confidentiality.

(b)

(i) If the chief administrative officer fails to make a decision on an appeal of an access denial within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the access denial.

(ii) If the chief administrative officer fails to make a decision on an appeal under Subsection (1)(b) within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the claim of extraordinary circumstances or the reasonableness of the date specified when the records will be available.

(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) Except as provided in Section 63G-2-406, 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 Subsection 63G-2-302(2) or protected under Section 63G-2-305 if the interests favoring access are greater than or equal to the interests favoring restriction of access.

(7)

(a) The governmental entity shall send written notice of the chief administrative officer's decision to all participants.

(b) If the chief administrative officer's decision is to affirm the access denial in whole or in part, the notice under Subsection (7)(a) shall include:

(i) a statement that the requester or interested party has the right to appeal the decision, as provided in Section 63G-2-402, to:

(A) the records committee or district court; or

(B) the local appeals board, if the governmental entity is a political subdivision and the governmental entity has established a local appeals board;

(ii) the time limits for filing an appeal; and

(iii) the name and business address of:

(A) the executive secretary of the records committee; and

(B) the individual designated as the contact individual for the appeals board, if the governmental entity is a political subdivision that has established an appeals board under Subsection 63G-2-701(5)(c).

(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 decision 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.

Amended by Chapter 435, 2017 General Session

63G-2-402. Appealing a decision of a chief administrative officer.

(1) If the decision of the chief administrative officer of a governmental entity under Section 63G-2-401 is to affirm the denial of a record request, the requester may:

(a)

(i) appeal the decision to the records committee, as provided in Section 63G-2-403; or

(ii) petition for judicial review of the decision in district court, as provided in Section 63G-2-404; or

(b) appeal the decision to the local appeals board if:

(i) the decision is of a chief administrative officer of a governmental entity that is a political subdivision; and

(ii) the political subdivision has established a local appeals board.

(2) A requester who appeals a chief administrative officer's decision to the records committee or a local appeals board does not lose or waive the right to seek judicial review of the decision of the records committee or local appeals board.

(3) As provided in Section 63G-2-403, an interested party may appeal to the records committee a chief administrative officer's decision under Section 63G-2-401 affirming an access denial.

Amended by Chapter 335, 2015 General Session

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

(1)

(a) A records committee appellant appeals to the records committee by filing a notice of appeal with the executive secretary of the records committee no later than 30 days after the date of issuance of the decision being appealed.

(b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the executive secretary of the records committee no later than 45 days after the day on which the record request is made if:

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

(ii) the chief administrative officer fails to make a decision under Section 63G-2-401.

(2) The notice of appeal shall:

(a) contain the name, mailing address, and daytime telephone number of the records committee appellant;

(b) be accompanied by a copy of the decision being appealed; and

(c) state the relief sought.

(3) The records committee appellant:

(a) shall, on the day on which the notice of appeal is filed with the records committee, serve a copy of the notice of appeal on:

(i) the governmental entity whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party; or

(ii) the requester or interested party who is a party to the local appeals board proceeding that resulted in the decision that the political subdivision is appealing to the records committee, if the records committee appellant is a political subdivision; and

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

(4)

(a) Except as provided in Subsections (4)(b) and (c), no later than seven business days after receiving a notice of appeal, the executive secretary of the records committee shall:

(i) schedule a hearing for the records committee to discuss the appeal at the next regularly scheduled committee meeting falling at least 16 days after the date the notice of appeal is filed but no longer than 64 calendar days after the date the notice of appeal was filed except that the records committee may schedule an expedited hearing upon application of the records committee appellant and good cause shown;

(ii) send a copy of the notice of hearing to the records committee appellant; and
(iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:
(A) each member of the records committee;
(B) the records officer and the chief administrative officer of the governmental entity whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party;
(C) any person who made a business confidentiality claim under Section 63G-2-309 for a record that is the subject of the appeal; and
(D) all persons who participated in the proceedings before the governmental entity's chief administrative officer, if the appeal is of the chief administrative officer's decision affirming an access denial.

(b)
(i) The executive secretary of the records committee may decline to schedule a hearing if the record series that is the subject of the appeal has been found by the committee in a previous hearing involving the same governmental entity to be appropriately classified as private, controlled, or protected.
(ii)
(A) If the executive secretary of the records committee declines to schedule a hearing, the executive secretary of the records committee shall send a notice to the records committee appellant indicating that the request for hearing has been denied and the reason for the denial.
(B) The committee shall make rules to implement this section as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) The executive secretary of the records committee may schedule a hearing on an appeal to the records committee at a regularly scheduled records committee meeting that is later than the period described in Subsection (4)(a)(i) if that records committee meeting is the first regularly scheduled records committee meeting at which there are fewer than 10 appeals scheduled to be heard.

(5)
(a) No later than five business days before the hearing, a governmental entity shall submit to the executive secretary of the records committee a written statement of facts, reasons, and legal authority in support of the governmental entity's position.
(b) The governmental entity shall send a copy of the written statement by first class mail, postage prepaid, to the requester or interested party involved in the appeal. The executive secretary shall forward a copy of the written statement to each member of the records committee.

(6)
(a) No later than 10 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.
(b) Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention.
(c) The person seeking intervention shall provide copies of the statement described in Subsection (6)(b) to all parties to the proceedings before the records committee.

(7) The records committee shall hold a hearing within the period of time described in Subsection (4).

(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)
(i) The records committee:
(A) may review the disputed records; and
(B) shall review the disputed records, if the committee is weighing the various

interests under Subsection (11).

(ii) A review of the disputed records under Subsection (9)(a)(i) 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) When the subject of a records committee subpoena disobeys or fails to comply with the subpoena, the records committee may file a motion for an order to compel obedience to the subpoena with the district court.

(c)

(i) The records committee's review shall be de novo, if the appeal is an appeal from a decision of a chief administrative officer:

(A) issued under Section 63G-2-401; or

(B) issued by a chief administrative officer of a political subdivision that has not established a local appeals board.

(ii) For an appeal from a decision of a local appeals board, the records committee shall review and consider the decision of the local appeals board.

(11)

(a) No later than seven business days after the hearing, the records committee shall issue a signed order:

(i) granting the relief sought, in whole or in part; or

(ii) upholding the governmental entity's access denial, in whole or in part.

(b) Except as provided in Section 63G-2-406, 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 is greater than or equal to the interest favoring restriction of access.

(c) In making a determination under Subsection (11)(b), the records committee shall consider and, where appropriate, limit the requester's or interested party's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of a private or controlled record;

(ii) business confidentiality interests in the case of a record protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

(iii) 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, if 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, if the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-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 73 calendar days of the filing of the notice of appeal, that failure is the equivalent of an order denying the appeal. A records committee appellant shall notify the records committee in writing if the records committee appellant considers the appeal denied.

(14) A party to a proceeding before the records committee may seek judicial review in district court of a records committee order by filing a petition for review of the records committee order as provided in Section 63G-2-404.

(15)

(a) Unless a notice of intent to appeal is filed under Subsection (15)(b), each party to the proceeding shall comply with the order of the records committee.
(b) If a party disagrees with the order of the records committee, that party may file a notice of intent to appeal the order of the records committee.
(c) If the records committee orders the governmental entity to produce a record and no appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a record, the governmental entity shall:
(i) produce the record; and
(ii) file a notice of compliance with the records committee.
(d)
(i) If the governmental entity that is ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the records committee may do either or both of the following:
(A) impose a civil penalty of up to $500 for each day of continuing noncompliance; or
(B) send written notice of the governmental entity's noncompliance to:
(I) the governor for executive branch entities;
(II) the Legislative Management Committee for legislative branch entities; and
(III) the Judicial Council for judicial branch agencies entities.
(ii) In imposing a civil penalty, the records committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional.

Amended by Chapter 335, 2015 General Session

63G-2-404. Judicial review.

(1)
(a) A petition for judicial review of an order or decision, as allowed under this part or in Subsection 63G-2-701(6)(a)(ii), shall be filed no later than 30 days after the date of the order or decision.
(b) The records committee is a necessary party to a petition for judicial review of a records committee order.
(c) The executive secretary of the records committee shall be served with notice of a petition for judicial review of a records committee order, in accordance with the Utah Rules of Civil Procedure.
(2) A petition for judicial review is 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 is seeking judicial review of an order of 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.
(3) If the appeal is based on the denial of access to a protected record based on a claim of business confidentiality, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.
(4) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.
(5) The district court may review the disputed records. The review shall be in camera.
(6)
(a) The court shall:

(i) make the court's decision de novo, but, for a petition seeking judicial review of a records committee order, allow introduction of evidence presented to the records committee;
(ii) determine all questions of fact and law without a jury; and
(iii) decide the issue at the earliest practical opportunity.

(b) In a court's review and decision of a petition seeking judicial review of a records committee order, the court may not remand the petition to the records committee for any additional proceedings.

(7)

(a) Except as provided in Section 63G-2-406, 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 is greater than or equal to 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 63G-2-305(1) and (2), and privacy interests or the public interest in the case of other protected records.

Amended by Chapter 435, 2017 General Session

63G-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 are greater than or equal to 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 attorney 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 63G-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.

Amended by Chapter 377, 2012 General Session

63G-2-406. Evidentiary standards for release of certain enforcement and litigation records.

(1) A record that is classified as protected under Subsection 63G-2-305(10), (17), (18), (23), (24), or (33) may be ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404(8)(a) only if the person or party seeking disclosure of the record has established, by a preponderance of the evidence, that the public interest favoring access is equal to or greater than the interest favoring restriction of access.

(2) A record that is classified as protected under Subsection 63G-2-305(11) may be ordered to be

disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404(8) only if the person or party seeking disclosure of the record has established, by clear and convincing evidence, that the public interest favoring access is equal to or greater than the interest favoring restriction of access.

Amended by Chapter 445, 2013 General Session

Part 5. State Records Committee

63G-2-501. State Records Committee created -- Membership -- Terms -- Vacancies -- Expenses.

(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 the individual to create or manage records that if created by a governmental entity would be private or controlled;
- (b) the director of the Division of State History or the director's designee;
- (c) the governor or the governor's designee;
- (d) two citizen members;
- (e) one person representing political subdivisions, as recommended by the Utah League of Cities and Towns; and
- (f) one individual representing the news media.

(2) The members specified in Subsections (1)(a), (d), (e), and (f) shall be appointed by the governor with the consent of the Senate.

(3)
- (a) Except as required by Subsection (3)(b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.
- (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.
- (c) Each appointed member is eligible for reappointment for one additional term.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 335, 2015 General Session

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

(1) The records committee shall:
- (a) meet at least once every three months;
- (b) review and approve schedules for the retention and disposal of records;
- (c) hear appeals from determinations of access as provided by Section 63G-2-403;
- (d) determine disputes submitted by the state auditor under Subsection 67-3-1(16)(d); and
- (e) appoint a chairman from among its members.

(2) The records committee may:
- (a) make rules to govern its own proceedings as provided by Title 63G, Chapter 3, 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 records committee shall annually appoint an executive secretary to the records committee. The executive secretary may not serve as a voting member of the 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) 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.

(7) The Office of the Attorney General shall provide counsel to the records committee and shall review proposed retention schedules.

Amended by Chapter 11, 2017 General Session

Part 6. Collection of Information and Accuracy of Records

63G-2-601. Rights of individuals on whom data is maintained -- Classification statement -- Notice to provider of information.

(1)
- (a) Each governmental entity shall file with the state archivist a statement explaining the purposes for which a record series that is designated as private or controlled is collected and used by that governmental entity.
- (b) The statement filed under Subsection (1)(a) is a public record.

(2)
- (a) A governmental entity shall provide notice of the following to a person that is asked to furnish information that could be classified as a private or controlled record:
  - (i) the reasons the person is asked to furnish the information;
  - (ii) the intended uses of the information;
  - (iii) the consequences for refusing to provide the information; and
  - (iv) the classes of persons and the governmental entities that currently:
    - (A) share the information with the governmental entity; or
    - (B) receive the information from the governmental entity on a regular or contractual basis.
- (b) The notice shall be:
  - (i) posted in a prominent place at all locations where the governmental entity collects the information; or
  - (ii) included as part of the documents or forms that are used by the governmental entity to collect the information.

(3) Upon request, each governmental entity shall explain to a person:
- (a) the reasons the person is asked to furnish information that could be classified as a private or controlled record;
- (b) the intended uses of the information referred to in Subsection (3)(a);
- (c) the consequences for refusing to provide the information referred to in Subsection (3)(a); and
- (d) the reasons and circumstances under which the information referred to in Subsection (3)(a) may be shared with or provided to other persons or governmental entities.

(4) A governmental entity may use private or controlled records only for those purposes:
- (a) given in the statement filed with the state archivist under Subsection (1); or
- (b) for which another governmental entity may use the record under Section 63G-2-206.

Renumbered and Amended by Chapter 382, 2008 General Session

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

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

Renumbered and Amended by Chapter 382, 2008 General Session

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

(1) Proceedings of state agencies under this section shall be governed by Title 63G, Chapter 4, 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 63G, Chapter 4, 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.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-604. Retention and disposition of records.

(1)

(a) Except for a governmental entity that is permitted to maintain its own retention schedules under Part 7, Applicability to Political Subdivisions, the Judiciary, and the Legislature, each governmental entity shall file with the State Records Committee a proposed schedule for the retention and disposition of each type of material that is defined as a record under this chapter.

(b) After a retention schedule is reviewed and approved by the State Records Committee under Subsection 63G-2-502(1)(b), the governmental entity shall maintain and destroy records in accordance with the retention schedule.

(c) If a governmental entity subject to the provisions of this section has not received an approved retention schedule for a specific type of material that is classified as a record under this chapter, the model retention schedule maintained by the state archivist shall govern the retention and destruction of that type of material.

(2) A retention schedule that is filed with or approved by the State Records Committee under the requirements of this section is a public record.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 7. Applicability to Political Subdivisions, the Judiciary, and the Legislature

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

(1) As used in this section:

(a) "Access denial" means the same as that term is defined in Section 63G-2-400.5.

(b) "Interested party" means the same as that term is defined in Section 63G-2-400.5.

(c) "Requester" means the same as that term is defined in Section 63G-2-400.5.

(2)

(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 Part 1, General Provisions, Part 3, Classification, and Sections 63A-12-105, 63A-12-107, 63G-2-201, 63G-2-202, 63G-2-205, 63G-2-206, 63G-2-601, and 63G-2-602.

(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.

(g) The report required by Subsection (2)(f) is notification to state archives of the political subdivision's retention schedules, designations, and classifications. The report is not subject to approval by state archives. If state archives determines that a different retention schedule is needed for state purposes, state archives shall notify the political subdivision of the state's retention schedule for the records and shall maintain the records if requested to do so under Subsection 63A-12-105(2).

(3) 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, Classification;

(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 63G-2-203; and

(d) provide standards for the management and retention of the records of the political subdivision comparable to Section 63A-12-103.

(4)

(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 63G-2-204 and Part 4, Appeals, if it determines that the resources of the political subdivision are insufficient to meet the requirements of those sections.

(5)

(a) A political subdivision shall establish an appeals process for persons aggrieved by classification, designation, or access decisions.

(b) A political subdivision's appeals process shall include a process for a requester or interested party to appeal an access denial to a person designated by the political subdivision as the chief administrative officer for purposes of an appeal under Section 63G-2-401.

(c)

(i) A political subdivision may establish an appeals board to decide an appeal of a decision of the chief administrative officer affirming an access denial.
(ii) An appeals board established by a political subdivision shall be composed of three members:
(A) one of whom shall be an employee of the political subdivision; and
(B) two of whom shall be members of the public who are not employed by or officials of a governmental entity, at least one of whom shall have professional experience with requesting or managing records.
(iii) If a political subdivision establishes an appeals board, any appeal of a decision of a chief administrative officer shall be made to the appeals board.
(iv) If a political subdivision does not establish an appeals board, the political subdivision's appeals process shall provide for an appeal of a chief administrative officer's decision to the records committee, as provided in Section 63G-2-403.

(6)
(a) A political subdivision or requester may appeal an appeals board decision:
(i) to the records committee, as provided in Section 63G-2-403; or
(ii) by filing a petition for judicial review with the district court.
(b) The contents of a petition for judicial review under Subsection (6)(a)(ii) and the conduct of the proceeding shall be in accordance with Sections 63G-2-402 and 63G-2-404.
(c) A person who appeals an appeals board decision to the records committee does not lose or waive the right to seek judicial review of the decision of the records committee.

(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.

Amended by Chapter 435, 2017 General Session

63G-2-702. Applicability to the 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, Appeals, except as provided in Subsection (5).
(b) The judiciary is not subject to Part 5, State Records Committee, and Part 6, Collection of Information and Accuracy of Records.
(c) The judiciary is subject to only the following sections in Part 9, Public Associations: Sections 63A-12-105 and 63A-12-106.

(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 63G-2-301 through 63G-2-305.

(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, retention, 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 63A-12-103.

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

(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 and Title 63A,

Chapter 12, Public Records Management Act.

Amended by Chapter 369, 2012 General Session

63G-2-703. Applicability to the Legislature.

(1) The Legislature and its staff offices shall designate and classify records in accordance with Sections 63G-2-301 through 63G-2-305 as public, private, controlled, or protected.

(2)

(a) The Legislature and its staff offices are not subject to Section 63G-2-203 or to Part 4, Appeals, Part 5, State Records Committee, or Part 6, Collection of Information and Accuracy of Records.

(b) The Legislature is subject to only the following sections in Title 63A, Chapter 12, Public Records Management Act: Sections 63A-12-102 and 63A-12-106.

(3) The Legislature, through the Legislative Management Committee:

(a) shall establish policies to handle requests for classification, designation, fees, access, denials, segregation, appeals, management, retention, and amendment of records; and

(b) 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, Access to Records, 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 and Title 63A, Chapter 12, Public Records Management Act.

Amended by Chapter 258, 2015 General Session

Part 8. Remedies

63G-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, provides a copy of, or improperly uses a private, controlled, or protected record knowing that the disclosure or use is prohibited under this chapter, is, except as provided in Subsection 53-5-708(1)(c), guilty of a class B misdemeanor.

(b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released private, controlled, or protected information in the reasonable belief that the use or 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.

(d) It is a defense to prosecution under Subsection (1)(a) that the public employee or other person disclosed, provided, or used the record based on a good faith belief that the disclosure, provision, or use was in accordance with the law.

(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 the person 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) A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by law, is guilty of a class B misdemeanor.

(b) It is a defense to prosecution under Subsection (3)(a) that the public employee's failure to release the record was based on a good faith belief that the public employee was acting in accordance with the requirements of law.

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

Amended by Chapter 298, 2013 General Session

63G-2-802. Injunction -- Attorney 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 attorney 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) Attorney 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 attorney 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 63G-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 attorney fees as provided in this section or for damages are subject to Title 63G, Chapter 7, Governmental Immunity Act of Utah.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-803. No individual liability for certain decisions of a governmental entity.

(1) Neither the governmental entity, nor any officer or employee of the governmental entity, 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.

(2) Neither the governmental entity, nor any officer or employee of the governmental entity, is liable for damages arising from the negligent disclosure of records classified as private under Subsection 63G-2-302(1)(g) unless:

(a) the disclosure was of employment records maintained by the governmental entity; or

(b) the current or former government employee had previously filed the notice required by Section 63G-2-303 and:

(i) the government entity did not take reasonable steps to preclude access or distribution of the record; or

(ii) the release of the record was otherwise willfully or grossly negligent.

(3) A mailing from a government agency to an individual who has filed an application under Section 63G-2-303 is not a wrongful disclosure under this chapter or under Title 63A, Chapter 12, Public Records Management Act.

Amended by Chapter 426, 2013 General Session

63G-2-804. Violation of provision of chapter -- Penalties for intentional mutilation or destruction -- Disciplinary action.

A governmental entity may take disciplinary action which may include suspension or discharge against any employee of the governmental entity who intentionally violates any provision of this chapter or Subsection 63A-12-105(3).

Amended by Chapter 44, 2009 General Session

Part 9. Public Associations

63G-2-901. Definitions -- Public associations subject to act.

(1) As used in this section:

(a) "Public association" means any association, organization, or society whose members include elected or appointed public officials and for which public funds are used or paid to the public association for membership dues or for other support for the official's participation in the public association.

(b)

(i) "Public funds" means any money received by a public entity from appropriations, taxes, fees, interest, or other returns on investment.

(ii) "Public funds" does not include money donated to a public entity by a person or entity.

(2) The budget documents and financial statements of a public association shall be released pursuant to a written request if 50% or more of the public association's:

(a) members are elected or appointed public officials from this state; and

(b) membership dues or other financial support come from public funds from this state.

Renumbered and Amended by Chapter 382, 2008 General Session