

**COTTONWOOD IMPROVEMENT DISTRICT**  
**RECORDS ACCESS AND MANAGEMENT REGULATIONS**

**Section 1 - General Purpose**

- A. The Cottonwood Improvement District (“the District”) has adopted the following regulations to establish rules for legal access to open government information recognizing the need to maintain and preserve accurate records, provide public access to public records and preserve the right of privacy of personal data collected or received by the District.

**Section 2 - District Regulations**

- A. In adopting these regulations, the Cottonwood Improvement District recognizes the enactment of Government Records Access and Management Act (the “Act”) (UTAH CODE ANN. §§ 63-2-101 et seq. (1953)) and the application of the Act to District records. A copy of the pertinent sections of the Act is attached hereunder in Appendix I. The purpose of the following regulations is to conform with § 63-2-701 which provides that each political subdivision may adopt rules relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention and amendment of records. The intent of these regulations is to provide modifications to the general provision of State law, where allowed, to best meet the public needs, operation, management capabilities and resources of the District.

**Section 3 - Compliance with State Law**

A. The District recognizes the following sections of the Act apply to the District and adopts by reference the stated provisions as its regulations. Any inconsistency or conflict between these regulations and the following referenced sections of the Act shall be governed by the Act.

General Provisions

§ 63-2-101	Short title
§ 63-2-102	Legislative intent
§ 63-2-103	Definitions
§ 63-2-104	Administrative Procedures Act not applicable
§ 63-2-105	Confidentiality agreements

Access to Records

§ 63-2-201	Right to inspect records and receive copies of records.
§ 63-2-202	Access to private, controlled, and protected documents
§ 63-2-205	Denials
§ 63-2-206	Sharing records

Classification

§ 63-2-301	Records that must be disclosed
§ 63-2-302	Private records
§ 63-2-303	Controlled records
§ 63-2-304	Protected records
§ 63-2-305	Procedure to determine classification

§ 63-2-306	Duty to evaluate records and make designations and classifications
§ 63-2-307	Segregation of records
§ 63-2-308	Confidentiality claims

Accuracy of Records

§ 63-2-601	Rights of individuals on whom data is maintained - Classification statement - Notice to provider of information
§ 63-2-602	Disclosure to subject of records - Context of use
§ 63-2-603	Requests to amend a record - Appeals

**Section 4 - Definitions**

- A. “Act” shall refer to the Government Records Access and Management Act, UTAH CODE ANN. §§ 63-2-101, et seq. (1953) (*see* Appendix I).
- B. “Computer software program” means the series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system and any associated documentation and source material explaining how to operate the software program. “Software” does not include the original data or record which is manipulated by software.
- C. “Controlled records” shall be those records defined as controlled under the provisions of the Act.
- D. “Data” shall refer to individual entries (for example, birth date, address, etc.) in records.
- E. “Dispose” means to destroy, or render irretrievable or illegible, a record or the information contained in it by a physical, electronic, or other means, including

unauthorized deletion or erasure of electronically recorded audio, visual, non-written formats, data processing, or other records.

- F. "District" shall refer to the Cottonwood Improvement District or any public or private entity which pursuant to contract with the District has agreed to produce and maintain its records.
- G. "Non-public records" shall refer to those records defined as private, controlled or protected under the provisions of the Act.
- H. "Private records" shall refer to those records classified as private under the provisions of the Act.
- I. "Protected records" shall refer to those records classified as protected under the provisions of the Act.
- J. "Public records" shall refer to those records which have not been classified as non-public in accordance with the provisions of the Act.
- K. (1) "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, or other documentary materials, and electronic data regardless of physical form or characteristics, prepared, owned, used, received, or retained by the District where all the information in the original is reproducible by some mechanical, electronic, photographic or other means, except as provided below.  
(2) "Record" does not mean:
  - (a) Temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of a person for whom he is working;

- (b) Materials that are legally owned by an individual in his private capacity;
- (c) Materials to which access is limited by the laws of copyright or patent, unless the copyright or patent is owned by the District or an official or employee of the District;
- (d) Junk mail or commercial publications received by the District or by an officer or employee of the District;
- (e) Personal notes or daily calendars prepared or received by a District employee or officer for personal use or the personal use of a supervisor or such notes, calendars or internal memoranda prepared for the use of an officer or agency acting in a quasi-judicial or deliberative process or pursuant to matters discussed in a meeting closed pursuant to Utah Open Meetings Act;
- (f) Proprietary computer software programs as defined in subsection C. above that are developed or purchased by or for the District for its own use; or
- (g) Email messages sent or received by any District employee that have not been printed or otherwise reduced to a document.

**Section 5 - Public, Private, Controlled and Protected Records**

- A. Public records shall be those District records as defined in § 63-2-301. Public records shall be made available to any person. All District records are considered public unless they are otherwise (1) expressly designated, classified or defined by the Act, or (2) are made non-public by other applicable law.

B. Private records shall be those District records classified as “private”, as defined in § 63-2-302(1), and as designated, classified, or defined in procedures established pursuant to these regulations. Private records shall also be those District records set forth in § 63-2-302(2) to the extent such records can be classified as private by the District. Private records shall be made available only to (i) the subject of the record, (ii) the parent or legal guardian of an unemancipated minor who is the subject of the record, (iii) the legal guardian of a legally incapacitated individual who is the subject of the record, (iv) any person who has a power of attorney or a notarized release, dated no more than ninety (90) days before the request is made, from the subject of the record or his legal representative, (v) any person who is a health care provider under § 26-33a-102 if the requested record is a medical record under § 63-2-302(1)(b) and if releasing the record or information in the record is consistent with normal professional practice and medical ethics, or (vi) any person possessed of and serving a legislative subpoena or a court order issued by a court of competent jurisdiction.

C. Controlled records shall be those District records classified as “controlled”, as defined in § 63-2-303 to the extent such records can be classified as controlled by the District, and as designated, classified, or defined in procedures established in these regulations. Controlled records shall be made available only to (i) a physician, psychologist, insurance provider or producer, government public health agency, or licensed social worker who submits a notarized release from the subject of the record, which release is dated no more than ninety (90) days before the request is made, and a signed acknowledgment of terms

of disclosure, or (ii) any person presenting a legislative subpoena or a court order signed by a judge of a court of competent jurisdiction.

- D. Protected records shall be those District records classified as “protected”, as defined in § 63-2-304, and as designated, classified or defined in procedures established in these regulations. Protected records shall be made available only to (i) the person who submitted the record; (ii) a person who has power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; (iii) a person who 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, which release is dated no more than ninety (90) days prior to the date the request is made; or (iv) to any person presenting a legislative subpoena or a court order regarding the release of the information and signed by a judge of a court of competent jurisdiction.

#### **Section 6 - Public Right to Records**

- A. Members of the public shall have the right to see, review, examine and take paper photocopies, or other format as determined by the District, of all District records which the person, upon proper request, has the right to inspect.
- B. The District has no obligation to create a record or record series in response to a request from a member of the public.
- C. When a record is temporarily held by a custodial agency, pursuant to that custodial agency's statutory functions, such as record storage, investigation, litigation, or audit, the

record shall not be considered a record of the custodial agency for the purposes of these regulations. The record shall be considered a record of the District and any requests for access to such records shall be directed to the District, rather than the custodial agency, pursuant to these procedures.

### **Section 7 - Privacy Rights**

- A. The District recognizes and upholds the personal right of privacy retained by persons who may be the subject of governmental records.
- B. The District may, as determined appropriate by the manager, notify the subject of a record that a request for access to the subject's record has been made.
- C. The District may require that the requester of records provide a written release from the subject of the records in question, which release is notarized within thirty (30) days before the request, before access to such records is provided.

### **Section 8 - Designation, Classification and Retention**

- A. All District records and records series, of any format, shall be designated, classified and scheduled for retention according to the provisions of the Act and these regulations. Any records or record series generated in the future shall also be so designated, classified and scheduled for retention. Records designation classification and scheduling for retention shall be conducted under the supervision of the District Records Officer.

### **Section 9 - Procedures for Records Request**

- A. The record requester shall fill out and present to the District to the attention of the General Manager of the District, a written request on forms provided by the District. The date and time of the request shall be noted on the written request form and all time frames provided under these regulations shall commence from that time and date. In order to obtain approval by the District Manager or records officer of a record request, requesters of non-public records shall adequately identify themselves and their status prior to receiving access to non-public records.
- B. The District may respond to a request for a record by approving the request and providing the records, denying the request, notifying the requester that the District does not maintain the record requested, or such other appropriate response as may be established by these regulations or the Act.
- C. (1) Time for Response. The District shall respond to a written request for a record within ten (10) business days after receiving the request. If the requester demonstrates that an expedited response to the record request benefits the public rather than the requester, than the District shall respond to the request within five (5) business days after receiving the request. A public benefit is presumed if the request can demonstrate to the satisfaction of the District Records office that the request is made in good faith for a record for use in a story or report for publication or broadcast to the general public. If the District is unable to meet either of these deadlines due to extraordinary circumstances, the District shall notify the requester that it cannot immediately approve or deny the request.

(2) Extraordinary circumstances. The District may extend the time to respond to a request based upon extraordinary circumstances. Extraordinary circumstances shall include, but not be limited to, the following:

- (a) Some other governmental entity is currently using the record requested, in which case the District shall promptly request the entity in possession to return the record;
- (b) Some other governmental entity is using the record as part of an audit, and the audit would be impaired if the record were returned prior to the audit's completion;
- (c) The record requested is for either a voluminous quantity of records or requires the District to review a large number of records or perform extensive research to locate the materials requested;
- (d) The District is currently processing either a large number of records requests;
- (e) The request requires the District to review a large number of records to locate the records requested;
- (f) The request involves an analysis of legal issues to determine the proper response to the request;
- (g) The request involves extensive editing to separate data in a record the requester is entitled to inspect from that which the requester is not entitled to inspect; or

- (h) Providing the information request requires computer programming or other formal manipulation in order to segregate information the requester is entitled to inspect from information the requester is not entitled to inspect.
- (3) The following time limits apply to the above-listed extraordinary circumstances:
- (a) For extraordinary circumstances under (2)(a) above, the governmental entity in possession of the record shall return the record to the District within five (5) business days from the District's request to return the record unless returning the record would impair the entity's work;
  - (b) For extraordinary circumstances under (2)(b) above, the District shall notify the requester when the record is available for inspection and copying;
  - (c) For extraordinary circumstances under (2)(c), (d), and (e) above, the District shall disclose the records that it has located which the requester is entitled to inspect, provide the requester with an estimate of the time it will take to complete the request, complete the request as soon as reasonably possible, and for any non-expedited request, either require the requester to provide for copying of the records or treat a request for multiple records as separate requests and respond sequentially to each request;

- (d) For extraordinary circumstances under (2)(f) above, the District shall either approve or deny the request within five (5) business days after the original response time expired;
  - (e) For extraordinary circumstances under (2)(g) above, the District shall fulfill the request within fifteen (15) business days from the date of the original request; or
  - (f) For extraordinary circumstances under (2)(h) above, the District shall complete the request as soon as reasonably possible.
- D. The failure or inability of the District to respond to a request for a record within the time frames set out herein, or the District's denial of such a request, shall give the requester the right to appeal as provided in Section 11.

**Section 10 - Fees**

- A. Applicable fees for the processing of records requests under these regulations shall generally be established by resolution of the Board of Trustees. The District will charge fees according to the Fee Schedule adopted by the District and amended from time to time.

**Section 11 - Appeal Process**

- A. Any person aggrieved by the District's denial of a record request or extension of time to respond due to extraordinary circumstances, including a person not a party to the District's proceeding, may appeal the determination to the District Manager by filing a

written notice of appeal within thirty (30) days after notice of the District's action. The notice of appeal shall contain the petitioner's name, address, phone number, relief sought and if petitioner desires, a short statement of the facts, reasons and legal authority for the appeal.

- B. If the appeal involves a record that is subject to business confidentiality or affects the privacy rights of an individual, the District Manager shall send a notice of the requester's appeal to the effected person.
- C. The District Manager shall make a determination of the appeal within thirty (30) days after receipt of the appeal. During this 30-day period the District Manager may schedule an informal hearing or request any additional information deemed necessary to make a determination. The District Manager shall send written notice to all interested parties providing the reasons for the District Manager's determination.
- D. In addition, if the District Manager affirms the denial in whole or in part, the denial shall include a statement that the requester, including an aggrieved person who did not participate in the original appeal, has a right to appeal the denial to the District's Board of Trustees within thirty (30) days of the granting or denial of the original appeal at the next scheduled meeting.
- E. The person may file a written notice of appeal to the Board of Trustees to be heard at the next scheduled meeting of the Board. If there is no meeting scheduled in the next thirty (30) days, the Board of Trustees shall schedule a meeting for the purpose of hearing the appeal. The final decision of the Board of Trustees shall be by majority vote of a quorum

of the Board. The Board shall prepare a written decision outlining their final determination and reasons for the final determination.

- F. If the District Manager denies the record request or the Board of Trustees affirms the denial, in whole or in part, any aggrieved person, including persons who did not participate in the District's proceeding, may petition for judicial review in district court as provided in § 63-2-404.

### **Section 12 - Reasonable Accommodation**

- A. Reasonable accommodations regarding access to governmental records shall be provided to persons with disabilities in accordance with the Americans with Disabilities Act upon request of the applicant.

### **Section 13 - Records Amendments**

- A. Government records held by the District may be amended or corrected as needed. Requests for amendments, corrections, or other changes shall be made in writing to the District having custody of the records and setting forth, with specificity, the amendment or correction requested. When an amendment or correction of said government record is made, both the original record and the amended or corrected record shall be retained, unless provided otherwise by the Act or other State or Federal law.

### **Section 14 - Penalties**

- A. District employees who knowingly refuse to permit access to records in accordance with the Act and these regulations, who knowingly permit access to non-public records, or who knowingly, without authorization or legal authority, dispose of, alter, or remove records or allow other persons to do so in violation of the provisions of the Act, these regulations or other law or regulation may be subject to criminal prosecution and disciplinary action, including termination.
- B. In accordance with the Act, neither the District nor any of its officers or employees shall be liable for damages resulting from the release of a record where the requester presented evidence of authority to obtain the record, even if it may be subsequently determined that the requester had no such authority.

**Section 15 - Records Officer**

- A. There shall be appointed a District Records Officer to oversee and coordinate records access, management and archives activities. The Records Officer shall make annual reports of records services activities to the Board of Trustees.

**Section 16 - Records Maintenance**

- A. Records maintenance procedures shall be developed to ensure that due care is taken to safely and accurately maintain and preserve District records. The Records Officer shall be responsible for monitoring the application and use of technical processes in the creation, duplication, and disposal of District records. The Records Officer shall monitor

compliance with required standards of quality, permanence, and admissibility pertaining to the creation, use, and maintenance of records

- B. All District records shall remain the property of the District unless federal or state legal authority provides otherwise. Property rights to District records may not be permanently transferred from the District to any private individual or entity, including those legally disposable obsolete District records. This prohibition does not include the providing of copies of District records otherwise produced for release or distribution under this chapter
- C. Custodians of any District records shall, at the expiration of their terms of office, appointment or employment, deliver custody and control of all records kept or received by them to their successors, supervisors, or to the District Records Officer.

## APPENDIX I

### Selected Provisions of the Government Records Access and Management Act

#### § 63-2-101. Short title.

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

#### § 63-2-102. Legislative intent.

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

#### § 63-2-103. Definitions.

As used in this chapter:

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

- (b) and any arrests or jail bookings made by the agency.
- (3) "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Subsection 63-2-201(3)(b).
- (4) (a) "Computer program" means:
- (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 63-2-303.
- (7) "Designation," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.
- (8) "Elected official" means each person elected to a state office, county office, municipal office, school board or school district office, or special 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 Board, the State Board of Education, the State Board of Regents, and the State Archives;
  - (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;
  - (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;
  - (iv) any state-funded institution of higher education or public education; or
  - (v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.
- (b) "Governmental entity" also means every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business.
- (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 63-2-201(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 63-2-302.

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

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

(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 in the employee's or officer's private capacity;
- (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; or
- (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 63-2-301.

(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 63-2-501.

(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 63-2-901.

(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.

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

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

**§ 63-2-105. Confidentiality agreements.**

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

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

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

(2) 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 63-2-302, 63-2-302.5, 63-2-303, and 63-2-304; 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 63-2-302, 63-2-302.5, 63-2-303, or 63-2-304 may be classified private, controlled, or protected.

(5) (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section 63-2-202, 63-2-206, or 63-2-302.5.

(b) A governmental entity may disclose a record that is private under Subsection 63-2-302(2) or protected under Section 63-2-304 to persons other than those specified in Section 63-2-202 or 63-2-206 if the head of a governmental entity, or a designee, determines that:

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

(ii) the interests favoring access outweighs 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 63-2-304(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 63-2-203.

- (9) (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) When the requirements of Subsection (9)(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.
- (10) (a) A governmental entity that owns an intellectual property right and that offers the intellectual property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to be in the public interest.
- (b) Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the intellectual property right.
- (11) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this chapter.
- (12) A governmental entity may provide access to an electronic copy of a record in lieu of providing access to its paper equivalent.

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

- (1) Upon request, a governmental entity shall disclose a private record to:
- (a) the subject of the record;
  - (b) the parent or legal guardian of an unemancipated minor who is the subject of the record;
  - (c) the legal guardian of a legally incapacitated individual who is the subject of the record;
  - (d) any other individual who:
    - (i) has a power of attorney from the subject of the record;
    - (ii) submits a notarized release from the subject of the record or his legal representative dated no more than 90 days before the date the request is made; or
    - (iii) if the record is a medical record described in Subsection 63-2-302(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.
  - (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.
  - (b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.
- (3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.
- (4) Upon request, a governmental entity shall disclose a protected record to:
  - (a) the person who submitted the record;
  - (b) any other individual who:
    - (i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or
    - (ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;
  - (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; 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, another state, the United States, or a foreign government only as provided by Section 63-2-206.
- (6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.
- (7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:
  - (a) the record deals with a matter in controversy over which the court has jurisdiction;
  - (b) the court has considered the merits of the request for access to the record; and

- (c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:
    - (i) privacy interests in the case of private or controlled records;
    - (ii) business confidentiality interests in the case of records protected under Subsection 63-2-304(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, outweigh the interests favoring restriction of access; and
  - (e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.
- (8) (a) A governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:
- (i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;
  - (ii) determines that:
    - (A) the proposed research is bona fide; and
    - (B) the value of the research outweighs 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 63-2-801.
- (b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.
- (c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).
- (9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6), a governmental entity may disclose to persons other than those specified in this section records that are:
- (i) private under Section 63-2-302; or

- (ii) protected under Section 63-2-304 subject to Section 63-2-308 if a claim for business confidentiality has been made under Section 63-2-308.
- (b) Under Subsection 63-2-403(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 63-2-302;
  - (ii) controlled under Section 63-2-303; or
  - (iii) protected under Section 63-2-304 subject to Section 63-2-308 if a claim for business confidentiality has been made under Section 63-2-308.
- (c) Under Subsection 63-2-404(8), the court may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

### **§ 63-2-205. Denials.**

- (1) If the governmental entity denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.
- (2) The notice of denial shall contain the following information:
  - (a) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63-2-201(3)(b);
  - (b) citations to the provisions of this chapter, court rule or order, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63-2-201(3)(b);
  - (c) a statement that the requester has the right to appeal the denial to the chief administrative officer of the governmental entity; and
  - (d) the time limits for filing an appeal, and the name and business address of the chief administrative officer of the governmental entity.
- (3) Unless otherwise required by a court or agency of competent jurisdiction, a governmental entity may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process, including judicial appeal.

### **§ 63-2-206. Sharing records.**

- (1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:
  - (a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;
  - (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;
  - (c) is authorized by state statute to conduct an audit and the record is needed for that purpose; or

- (d) is one that collects information for presentence, probationary, or parole purposes.
- (2) (a) 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 outweighs 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), or (d).
- (b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection 63-2-304(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 outweighs 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; and

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

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

### **§ 63-2-301. Records that must be disclosed.**

(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 63-2-201(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 Subsections 63-2-304(16), (17), and (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 63-2-302.5, 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; and
  - (l) voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in Subsection 63-2-302(1)(i).
- (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 63-2-201(3)(b), Section 63-2-302, 63-2-303, or 63-2-304:
- (a) administrative staff manuals, instructions to staff, and statements of policy;
  - (b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

- (c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;
- (d) contracts entered into by a governmental entity;
- (e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;
- (f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304(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 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.
- (4) The list of public records in this section is not exhaustive and should not be used to limit access to records.

**§ 63-2-302. Private records.**

- (1) The following records are private:
- (a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;
  - (b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;
  - (c) records of publicly funded libraries that when examined alone or with other records identify a patron;
  - (d) records received or generated for a Senate or House Ethics Committee concerning any alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if the ethics committee meeting was closed to the public;
  - (e) 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;
  - (f) 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;
  - (g) records or parts of records under Section 63-2-302.5 that a current or former employee identifies as private according to the requirements of that section;
  - (h) 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, 61-1-4, or 61-2-6;
  - (i) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number;
  - (j) 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;
- (k) information provided to the Commissioner of Insurance under:
  - (i) Subsection 31A-23a-115(2)(a); or
  - (ii) Subsection 31A-23a-302(3); and
- (l) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.
- (2) The following records are private if properly classified by a governmental entity:
  - (a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63-2-301(2)(b) or 63-2-301(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 63-2-301(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; and
  - (e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.
- (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 63-2-303 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.

**§ 63-2-303. Controlled records.**

A record is controlled if:

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

**§ 63-2-304. Protected records.**

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

- (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63-2-308;
- (2) commercial information or nonindividual financial information obtained from a person if:
  - (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the 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 63-2-308;
- (3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;
- (4) 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 that this Subsection (6) does not restrict the right of a person to see bids submitted to or by a governmental entity after bidding has closed;
- (7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:
  - (a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;
  - (b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

- (c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;
  - (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 78-34-4.5;
- (8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:
- (a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or
  - (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;
- (9) 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;
- (10) records the disclosure of which would jeopardize the life or safety of an individual;
- (11) 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;
- (12) 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;
- (13) 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;

(14) 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;

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

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8;

(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 collective bargaining 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 contained in the database described in Section 62A-3-311.1;
- (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 pawnbroker or pawnshop to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop 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 63-2-106, records related to an emergency plan or program prepared or maintained by the Division of Emergency Services and Homeland Security 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 Services and Homeland Security information;
- (49) records of the Department of Agriculture and Food relating to the National Animal Identification System or any other program 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, Livestock Inspection and Quarantine;
- (50) as provided in Section 26-39-109:
  - (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; and
- (51) unless otherwise classified as public under Section 63-2-301 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.

**§ 63-2-305. Procedure to determine classification.**

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

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

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

(1) A governmental entity shall:

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

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

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

**§ 63-2-307. Segregation of records.**

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

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

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

**§ 63-2-308. Confidentiality claims.**

(1) (a) (i) Any person who provides to a governmental entity a record that the person believes should be protected under Subsection 63-2-304(1) or (2) or both Subsections 63-2-304(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 63-2-304(40)(a)(ii) or (vi) or both Subsections 63-2-304(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 63-2-304(1);
- (B) Subsection 63-2-304(2);
- (C) Subsection 63-2-304(40)(a)(ii);
- (D) Subsection 63-2-304(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 63-2-201(5)(b) or Subsection 63-2-401(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).

**§ 63-2-601. 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 63-2-206.

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

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

**§ 63-2-603. Requests to amend a record -- Appeals.**

- (1) Proceedings of state agencies under this section shall be governed by Title 63, Chapter 46b, Administrative Procedures Act.
- (2)
  - (a) Subject to Subsection (8), an individual may contest the accuracy or completeness of any public, or private, or protected record concerning him by requesting the governmental entity to amend the record. However, this section does not affect the right of access to private or protected records.
  - (b) The request shall contain the following information:
    - (i) the requester's name, mailing address, and daytime telephone number; and
    - (ii) a brief statement explaining why the governmental entity should amend the record.
- (3) The governmental entity shall issue an order either approving or denying the request to amend as provided in Title 63, Chapter 46b, Administrative Procedures Act, or, if the act does not apply, no later than 30 days after receipt of the request.
- (4) If the governmental entity approves the request, it shall correct all of its records that contain the same incorrect information as soon as practical. A governmental entity may not disclose the record until it has amended it.
- (5) If the governmental entity denies the request, it shall:
  - (a) inform the requester in writing; and
  - (b) provide a brief statement giving its reasons for denying the request.

- (6) (a) If a governmental entity denies a request to amend a record, the requester may submit a written statement contesting the information in the record.
- (b) The governmental entity shall:
- (i) file the requester's statement with the disputed record if the record is in a form such that the statement can accompany the record or make the statement accessible if the record is not in a form such that the statement can accompany the record; and
  - (ii) disclose the requester's statement along with the information in the record whenever the governmental entity discloses the disputed information.
- (7) The requester may appeal the denial of the request to amend a record pursuant to the Administrative Procedures Act or, if that act does not apply, to district court.
- (8) This section does not apply to records relating to title to real or personal property, medical records, judicial case files, or any other records that the governmental entity determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

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

- (1) All records created or maintained by a governmental entity of the state are the property of the state and shall not be mutilated, destroyed, or otherwise damaged or disposed of, in whole or part, except as provided in this chapter.
- (2) (a) Except as provided in Subsection (b), all records created or maintained by a political subdivision of the state are the property of the state and shall not be mutilated, destroyed, or otherwise damaged or disposed of, in whole or in part, except as provided in this chapter.
- (b) Records which constitute a valuable intellectual property shall be the property of the political subdivision.
- (c) The state archives may, upon request from a political subdivision, take custody of any record series of the political subdivision. A political subdivision which no longer wishes to maintain custody of a record which must be retained under the political subdivision's retention schedule or the state archive's retention schedule shall transfer it to the state archives for safekeeping and management.
- (3) It is unlawful for a governmental entity or political subdivision to intentionally mutilate, destroy, or otherwise damage or dispose of a record series knowing that such mutilation, destruction, or damage is in contravention of the political subdivision's or the state archive's properly adopted retention schedule.

**§ 63-2-907. Right to replevin.**

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