GOVERNMENT RECORDS AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill modifies provisions of the Government Records Access and Management Act and other provisions relating to government records.

Highlighted Provisions:

This bill:

- modifies cross references;
- eliminates codified intent language;
- provides a cross reference in the Public Records Management Act to identify legislative exemptions to the act;
- makes technical and organizational modifications to modernize and clarify language;
- modifies definitions;
- provides that voice mails, instant messages, video chats, and text messages are not records subject to the act, with some exceptions;
- modifies provisions defining records that are subject to regulation by the act;
- clarifies that fee provisions may be subject to approval procedures under the Budgetary Procedures Act;
- modifies provisions governing fees and costs related to records requests;
- modifies language identifying "extraordinary circumstances" related to records requests;
modifies provisions governing shared records procedures and application;
modifies provisions and requirements regulating records that must be disclosed;
provides that personal and financial information submitted to or received by a Senate confirmation committee is a private record;
provides that personal emails or similar electronic addresses of current or former government employees or applicants are private records;
provides protected status for certain records of the Office of the Utah State Auditor and Office of Legislative Auditor General;
provides that records may be classified as protected if they are prepared in anticipation of litigation;
provides that work product records may be classified as protected if the record involves anticipated or pending litigation;
modifies the protected record status of documents prepared, received, or maintained by a legislator;
modifies the protected record status of communications between legislators and staff in relation to performance of their official duties;
provides that records concerning a governmental entity's strategy may be classified as protected if the record is prepared for anticipated litigation, rather than only for pending litigation;
provides protected status for internal communications and working papers of the governor's office and modifies provisions limiting the length of protected status coverage for certain records of the governor;
provides that data and working papers associated with a fiscal note for legislation are protected until the legislation has passed;
provides protected status for personal email addresses and similar electronic addresses in some situations;
prohibits a governmental entity's chief administrative officer, the records committee, and a court from releasing certain protected records via means of a balancing test unless it is determined, by a preponderance of the evidence, that the public interest favoring access to the record outweighs the interest favoring restriction of access to the record;
provides that the Legislature may adopt policies regarding the receipt, processing, and response to record requests;

rewrites and reorganizes the section addressing the act's application to the Legislature;

dresses legislative compliance requirements with Title 63G, Chapter 2, Part 9, Public Associations; and

makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill [provides an immediate effective date.] takes effect on July 1, 2011. ↔

Utah Code Sections Affected:

AMENDS:

20A-2-104, as last amended by Laws of Utah 2010, Chapter 197
58-1-301, as last amended by Laws of Utah 2008, Chapter 382
61-1-4, as last amended by Laws of Utah 2009, Chapter 351
61-2f-203, as renumbered and amended by Laws of Utah 2010, Chapter 379
63G-2-103, as last amended by Laws of Utah 2010, Chapter 366
63G-2-203, as last amended by Laws of Utah 2009, Chapter 183
63G-2-204, as last amended by Laws of Utah 2010, Chapter 380
63G-2-206, as last amended by Laws of Utah 2009, Chapter 344
63G-2-301, as last amended by Laws of Utah 2009, Chapter 344
63G-2-302, as last amended by Laws of Utah 2010, Chapters 36 and 379
63G-2-303, as last amended and amended by Laws of Utah 2008, Chapter 382
63G-2-305, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247
63G-2-401, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-2-403, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-2-404, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-2-703, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-2-803, as last amended by Laws of Utah 2009, Chapter 44

ENACTS:
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 20A-2-104 is amended to read:

20A-2-104. Voter registration form -- Registered voter lists -- Fees for copies.

(1) Every person applying to be registered shall complete a registration form printed in substantially the following form:

<table>
<thead>
<tr>
<th>UTAH ELECTION REGISTRATION FORM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are you a citizen of the United States of America?</td>
</tr>
<tr>
<td>Will you be 18 years old on or before election day?</td>
</tr>
<tr>
<td>If you checked &quot;no&quot; to either of the above two questions, do not complete this form.</td>
</tr>
</tbody>
</table>

Name of Voter

_____________________________________________________________

First Middle Last

Utah Driver License or Utah Identification Card Number

Date of Birth

Street Address of Principal Place of Residence

____________________________________________________________________

City County State Zip Code

Telephone Number (optional)

Last four digits of Social Security Number

Last former address at which I was registered to vote (if known)

____________________________________________________________________

City County State Zip Code

Political Party

(a listing of each registered political party, as defined in Section 20A-8-101 and maintained by
the lieutenant governor under Section 67-1a-2, with each party's name preceded by a checkbox)

    □ Unaffiliated (no political party preference) □ Other (Please specify) ______________________

I do swear (or affirm), subject to penalty of law for false statements, that the
information contained in this form is true, and that I am a citizen of the United States and a
resident of the state of Utah, residing at the above address. I will be at least 18 years old and
will have resided in Utah for 30 days immediately before the next election. I am not a
convicted felon currently incarcerated for commission of a felony.

Signed and sworn

______________________________________________________________

Voter's Signature

____________________ (month/day/year).

CITIZENSHIP AFFIDAVIT

Name:
Name at birth, if different:
Place of birth:
Date of birth:
Date and place of naturalization (if applicable):

    I hereby swear and affirm, under penalties for voting fraud set forth below, that I am a
citizen and that to the best of my knowledge and belief the information above is true and
correct.

______________________________
Signature of Applicant

In accordance with Section 20A-2-401, the penalty for willfully causing, procuring, or
allowing yourself to be registered to vote if you know you are not entitled to register to vote is
up to one year in jail and a fine of up to $2,500.

NOTICE: IN ORDER TO BE ALLOWED TO VOTE, YOU MUST PRESENT VALID
VOTER IDENTIFICATION TO THE POLL WORKER BEFORE VOTING, WHICH MUST
BE A VALID FORM OF PHOTO IDENTIFICATION THAT SHOWS YOUR NAME AND
PHOTOGRAPH; OR
TWO DIFFERENT FORMS OF IDENTIFICATION THAT SHOW YOUR NAME AND
CURRENT ADDRESS.
(2) (a) Except as provided under Subsection (2)(b), the county clerk shall retain a copy of each voter registration form in a permanent countywide alphabetical file, which may be electronic or some other recognized system.

(b) The county clerk may transfer a superceded voter registration form to the Division of Archives and Records Service created under Section 63A-12-101.

(3) (a) Each county clerk shall retain lists of currently registered voters.

(b) The lieutenant governor shall maintain a list of registered voters in electronic form.

(c) If there are any discrepancies between the two lists, the county clerk's list is the official list.

(d) The lieutenant governor and the county clerks may charge the fees established under the authority of [Subsection] Section 63G-2-203[(10)] to individuals who wish to obtain a copy of the list of registered voters.

(4) When political parties not listed on the voter registration form qualify as registered political parties under Title 20A, Chapter 8, Political Party Formation and Procedures, the lieutenant governor shall inform the county clerks about the name of the new political party and direct the county clerks to ensure that the voter registration form is modified to include that political party.

(5) Upon receipt of a voter registration form from an applicant, the county clerk or the clerk's designee shall:

(a) review each voter registration form for completeness and accuracy; and

(b) if the county clerk believes, based upon a review of the form, that a person may be seeking to register to vote who is not legally entitled to register to vote, refer the form to the county attorney for investigation and possible prosecution.

Section 2. Section 58-1-301 is amended to read:

58-1-301. License application -- Licensing procedure.

(1) (a) Each license applicant shall apply to the division in writing upon forms
available from the division. Each completed application shall contain documentation of the
particular qualifications required of the applicant, shall include the applicant's Social Security
number, shall be verified by the applicant, and shall be accompanied by the appropriate fees.

(b) An applicant's Social Security number is a private record under Section 63G-2-302.

(2) (a) A license shall be issued to an applicant who submits a complete application if
the division determines that the applicant meets the qualifications of licensure.

(b) A written notice of additional proceedings shall be provided to an applicant who
submits a complete application, but who has been, is, or will be placed under investigation by
the division for conduct directly bearing upon the applicant’s qualifications for licensure, if the
outcome of additional proceedings is required to determine the division's response to the
application.

(c) A written notice of denial of licensure shall be provided to an applicant who
submits a complete application if the division determines that the applicant does not meet the
qualifications of licensure.

(d) A written notice of incomplete application and conditional denial of licensure shall
be provided to an applicant who submits an incomplete application. This notice shall advise
the applicant that the application is incomplete and that the application is denied, unless the
applicant corrects the deficiencies within the time period specified in the notice and otherwise
meets all qualifications for licensure.

(3) Before any person is issued a license under this title, all requirements for that
license as established under this title and by rule shall be met.

(4) If all requirements are met for the specific license, the division shall issue the
license.

Section 3. Section 61-1-4 is amended to read:

61-1-4. Licensing and notice filing procedure.

(1) (a) A broker-dealer, agent, investment adviser, or investment adviser representative
shall obtain an initial or renewal license by filing with the division or its designee an
application together with a consent to service of process under Section 61-1-26.

(b) (i) The application shall contain the applicant's Social Security number and
whatever information the division by rule requires concerning such matters as:
(A) the applicant's form and place of organization;
(B) the applicant's proposed method of doing business;
(C) (I) the qualifications and business history of the applicant; and
(II) in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser;
(D) whether the applicant has been subject to:
   (I) an injunction, administrative order, or misdemeanor conviction involving a security or any aspect of the securities business; or
   (II) a felony conviction; and
(E) the applicant's financial condition and history.
(ii) An applicant's Social Security number is a private record under [Subsection 63G-2-302(1)(h)] Section 63G-2-302.
(c) The division may, by rule or order, require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in this state.
(d) A license or notice filing of a broker-dealer, agent, investment adviser, or investment adviser representative expires on December 31 of each year.
(e) (i) If no denial order is in effect and no proceeding is pending under Section 61-1-6, a license becomes effective at noon of the 30th day after an application is filed.
(ii) The division may by rule or order specify an earlier effective date and may by order defer the effective date until noon of the 30th day after the filing of any amendment.
(iii) Licensing of a broker-dealer automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions as a licensed agent of the broker-dealer.
(iv) Licensing of an investment adviser automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions.
(v) (A) For purposes of the activities of a licensee in this state, during the time period that a broker-dealer or investment adviser is licensed in this state:
   (I) the broker-dealer shall maintain a principal; and
(II) the investment adviser shall maintain a designated official.

(B) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide a process for a person to identify for the division:

(I) a principal or designated official at the time a license is issued; and

(II) a different principal or designated official if:

(Aa) a broker-dealer changes its principal; or

(Bb) an investment adviser changes its designated official.

(C) A principal or designated official identified in Subsection (1)(e)(v)(A) is not required to be separately licensed with the division.

(2) Except with respect to a federal covered adviser whose only clients are those described in Subsection 61-1-3(3)(b) or (c), a federal covered adviser shall file with the division, before acting as a federal covered adviser in this state, a notice filing consisting of the documents filed with the Securities and Exchange Commission as the division by rule or order may require.

(3) (a) An applicant for an initial or renewal license as a broker-dealer or agent shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(b) An applicant for an initial or renewal license as an investment adviser or investment adviser representative who is subject to licensing under this chapter shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(c) A person acting as a federal covered adviser in this state shall pay an initial and renewal notice filing fee as determined under Section 61-1-18.4.

(d) If the license or renewal is not granted or the application is withdrawn, the division shall retain the fee.

(4) A licensed broker-dealer or investment adviser may file an application for licensing of a successor for the unexpired portion of the year. There shall be no filing fee.

(5) The division may by rule or order:

(a) require a minimum capital for a licensed broker-dealer, subject to the limitations of Section 15 of the Securities Exchange Act of 1934; and

(b) establish minimum financial requirements for an investment adviser:

(i) subject to the limitations of Section 222 of the Investment Advisers Act of 1940; and
(ii) which may include different requirements for an investment adviser who maintains custody of or has discretionary authority over client funds or securities and an investment adviser who does not.

(6) (a) The division may by rule or order require a licensed broker-dealer or investment adviser who has custody of or discretionary authority over client funds or securities to post one or more bonds in amounts and under conditions as the division may prescribe, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 for a broker-dealer, and Section 222 of the Investment Advisers Act of 1940 for an investment adviser.

(b) An appropriate deposit of cash or securities may be accepted in lieu of a required bond.

(c) A bond may not be required of a licensee whose net capital, or in the case of an investment adviser whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the division.

(d) A bond shall provide for suit on the bond by a person who has a cause of action under Section 61-1-22 and, if the division by rule or order requires, by any person who has a cause of action not arising under this chapter.

(e) A bond shall provide that a suit may not be maintained to enforce liability on the bond unless brought before the earlier of:

(i) the expiration of five years after the act or transaction constituting the violation; or

(ii) the expiration of two years after the discovery by the plaintiff of the facts constituting the violation.

Section 4. Section 61-2f-203 is amended to read:

61-2f-203. Licensing requirements.

(1) (a) Except as provided in Subsection (5), the commission shall determine the qualifications and requirements of an applicant for:

(i) a principal broker license;

(ii) an associate broker license; or

(iii) a sales agent license.

(b) The division, with the concurrence of the commission, shall require and pass upon proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of each applicant for an initial license or for renewal of an existing license.
(c) (i) The division, with the concurrence of the commission, shall require an applicant for:

(A) a sales agent license to complete an approved educational program consisting of the number of hours designated by rule made by the commission with the concurrence of the division, except that the rule may not require less than 120 hours; and

(B) an associate broker or a principal broker license to complete an approved educational program consisting of the number of hours designated by rule made by the commission with the concurrence of the division, except that the rule may not require less than 120 hours.

(ii) An hour required by this section means 50 minutes of instruction in each 60 minutes.

(iii) The maximum number of program hours available to an individual is eight hours per day.

(d) The division, with the concurrence of the commission, shall require the applicant to pass an examination approved by the commission covering:

(i) the fundamentals of:

(A) the English language;

(B) arithmetic;

(C) bookkeeping; and

(D) real estate principles and practices;

(ii) the provisions of this chapter;

(iii) the rules established by the commission; and

(iv) any other aspect of Utah real estate license law considered appropriate.

(e) (i) Three years' full-time experience as a sales agent or its equivalent is required before an applicant may apply for, and secure a principal broker or associate broker license in this state.

(ii) The commission shall establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the criteria by which the commission will accept experience or special education in similar fields of business in lieu of the three years' experience.

(2) (a) The division, with the concurrence of the commission, may require an applicant
to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's reputation and competency as set forth by rule.

(b) The division shall require an applicant to provide the applicant's Social Security number, which is a private record under [Subsection 63G-2-302(1)(h)] Section 63G-2-302.

(3) (a) An individual who is not a resident of this state may be licensed in this state if the person complies with all the provisions of this chapter.

(b) An individual who is not a resident of this state may be licensed as an associate broker or sales agent in this state by:

(i) complying with all the provisions of this chapter; and

(ii) being employed or engaged as an independent contractor by or on behalf of a principal broker who is licensed in this state, regardless of whether the principal broker is a resident of this state.

(4) (a) Except as provided in Subsection 61-2f-204(1)(e)(vi), the division and commission shall treat an application to be relicensed of an applicant whose real estate license is revoked as an original application.

(b) In the case of an applicant for a new license as a principal broker or associate broker, the applicant is not entitled to credit for experience gained before the revocation of a real estate license.

(5) (a) Notwithstanding Subsection (1), the commission may delegate to the division the authority to:

(i) review a class or category of applications for initial or renewed licenses;

(ii) determine whether an applicant meets the licensing criteria in Subsection (1); and

(iii) approve or deny a license application without concurrence by the commission.

(b) (i) If the commission delegates to the division the authority to approve or deny an application without concurrence by the commission and the division denies an application for licensure, the applicant who is denied licensure may petition the commission for review of the denial of licensure.

(ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek agency review by the executive director only after the commission has reviewed the division's denial of the applicant's application.

Section 5. Section 63A-12-109 is enacted to read:
63A-12-109. Applicability of chapter.

This chapter, with the exception of Sections 63A-12-102 and 63A-12-106, does not apply to the legislative branch of state government.

Section 6. Section 63G-2-103 is amended to read:

63G-2-103. Definitions.

As used in this chapter:

(1) "Audit" means:

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

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

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

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

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

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

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

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

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

(b) "Computer program" does not mean:

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

(ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or
(iii) the mathematical or statistical formulas, excluding the underlying mathematical algorithms contained in the program, that would be used if the manipulated forms of the original data were to be produced manually.

(5) (a) "Contractor" means:

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

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

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

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

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

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

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

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

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

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

(ii) the resultant gaseous pressures are capable of:

(A) producing destructive effects on contiguous objects; or

(B) causing death or serious bodily injury.

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

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

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

(ii) the Senate, House of Representatives, Legislative Printing Office, 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] a legislative committee, a legislative task force, or a legislative commission;

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

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

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

(b) "Governmental entity" also means [every] each 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.

(c) "Governmental entity" does not mean:

(i) a political party, group, or caucus; or

(ii) a rules or sifting committee of the Legislature.

(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] include:

(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] Subject to Subsection (14)(c), "initial contact report" does not include follow-up or investigative reports prepared after the initial contact report. [However, if the information specified in Subsection (14)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).]

(c) "Initial contact report" includes information specified in Subsections (14)(a)(i) through (vi) if the information appears in a follow-up or investigative report unless the information is private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(15) ["Legislative body" means the Legislature.] "Legislative staff employee" means an employee of the Senate, House of Representatives, Legislative Printing Office, Office of Legislative Auditor General, Office of Legislative Fiscal Analyst, or Office of Legislative Research and General Counsel.

(16) (a) "Legislature" means the Senate, House of Representatives, Legislative Printing Office, Office of Legislative Auditor General, Office of Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, a legislative committee, a legislative task force, a legislative commission, or any other office or subdivision of the legislative branch of state government.

(b) For purposes of regulation by this chapter, "Legislature" does not include:
(i) a political party, group, or caucus; or
(ii) a rules or sifting committee of the Legislature.

[46] (17) "Notice of compliance" means a statement confirming that a governmental entity has complied with a records committee order.
"Person" means:

(a) an individual;
(b) a nonprofit or profit corporation;
(c) a partnership;
(d) a sole proprietorship;
(e) any other type of business organization; or
(f) any combination of Subsections (18)(a) through (e) acting in concert with one another.

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

"Private record" means a record containing data on individuals that is classified as "private" under Section 63G-2-302.

"Protected record" means a record that is classified as "protected" under Section 63G-2-305.

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

"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 readily reproducible by photocopy or other mechanical or electronic means.

"Record" does not mean:

(i) a personal note or personal communication

Material in the following format:

(A) a voice mail message, or an electronic reproduction or textual representation of a voice mail message;

(B) an instant message, or a similar document, other than an email, that is electronically exchanged in the manner of a contemporaneous conversation, unless the exchange is an electronic meeting as governed by Section 52-4-207;
(C) a video chat, or similar transmission, whether or not the chat or transmission is saved in a retrievable form, that is electronically transmitted and has the form or content of a contemporaneous conversation, unless the video chat or transmission is an electronic meeting as governed by Section 52-4-207; or

(D) a text message, or similar text-based document, other than an email, that is electronically exchanged by means of a phone number;

(ii) a note prepared by an employee or officer of a governmental entity for the employee's or officer's own use or reference;

(iii) an oral, written, or video communication prepared or received by an employee or officer of a governmental entity in a capacity other than the employee's or officer's official governmental capacity;

(iv) 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;

(v) material that is legally owned by an individual and unrelated to the individual's official governmental duties;

(vi) 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;

(vii) proprietary software;

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

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

(x) 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;

(xi) 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;

(xii) a computer program that is developed or purchased by or for any governmental entity for its own use;
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 a governmental entity charged by law with performing a quasi-judicial function;

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

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

information that an owner of unimproved property provides to a local entity as provided in Section 11-42-205.

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

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

"Records officer" means the individual appointed by the chief administrative officer of each governmental entity or political subdivision to work with State Archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

"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.

"Sponsored research" means research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget that is:
(a) conducted by an institution within the state system of higher education defined in Section 53B-1-102 and through an office responsible for sponsored projects or programs; and

(b) funded or otherwise supported by:

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

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

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

"State archivist" means the director of the state archives.

"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.

"Technical assistance" means the assistance of information technology experts, computer technicians, computer programmers, information technology staff members, or similarly qualified individuals.

Section 7. Section 63G-2-203 is amended to read:

63G-2-203. Fees -- Standard fee -- Establishment of fees -- Additional costs.

(1) (a) A governmental entity may charge a reasonable fee for processing requests for a record under this chapter in an amount sufficient to cover the governmental entity's actual cost of providing a record[. This fee shall be approved by], including costs of overhead and administration.

(b) (i) For a governmental entity with fees approved by the Legislature, the governmental entity's executive officer[.] shall approve each fee and the governmental entity shall establish each fee according to the requirements of Section 63J-1-504.

(ii) For a political subdivision of the state, the legislative body of the political subdivision shall establish each fee by ordinance or a written formal policy.

(iii) For the judiciary, the Judicial Council shall establish each fee by rule.

(iv) Notwithstanding Subsections (1)(b)(i) and (ii), the lieutenant governor shall, after consulting with the county clerks, establish uniform fees for requests for voter registration and voter history records according to the procedures and requirements of Section 63J-1-504.
When a governmental entity compiles the records in relation to a record request:

(i) the reasonable cost for copies, duplication, or transmission of records in response to the record request;

(ii) for a record request that requests or requires a record in a form other than that normally maintained by the governmental entity, the actual costs under this section may include the following: (i) the actual cost of labor for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;

(iii) for a record request that necessitates the review of a large number of records, the actual cost of labor for search, retrieval, and other direct administrative costs for complying with a request organization or classification of the records;

(iv) for a record request that requires production of records, or a record series containing a substantial number of records, the actual cost of labor for review, organization, and classification of the records;

(v) for a record request that necessitates segregation of information or extensive editing or redacting, the actual cost of labor for review, segregation, editing, and redacting of the records;

(vi) for a records request that requires legal review in order to process or respond to the request, or to classify records, the actual cost of labor for legal review and recommendations required in relation to the request; and

(vii) in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users, and the administrative costs as set forth in Subsections (2)(a)(i) and (ii):]
(b) [An hourly charge] In calculating the actual cost of labor charged under Subsection (2)(a) [may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request.], a governmental entity:

(i) shall, for a service performed by an employee of the governmental entity, charge the actual hourly pay rate of each employee performing a service in response to the request, or the actual hourly pay rate of the lowest paid employee available to perform the service who, in the discretion of the custodian of records, has the job classification and training necessary to perform the service, whichever is lower;

(ii) shall, for a service performed by a person who is not an employee of the governmental entity, charge the actual rate charged to the governmental entity for each service performed in response to the request, provided that the service provider certifies that the rates charged are not higher than the actual hourly pay rate of the lowest paid person having the job classification and training necessary to perform the service; and

(iii) may not include the first quarter hour of time required to perform the service.

(c) When assessing an additional cost under Subsection (2)(a), a governmental entity shall:

(i) document the actual cost of labor in a manner that clearly identifies the hours and rate applied to each service and the actual cost of third party services charged to the governmental entity; and

(ii) provide the documentation to each requestor that is being assessed an additional cost for services in support of the additional cost assessed.

[(e) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first quarter hour of staff time:]

[(3)(a) Fees shall be established as provided in this Subsection (3):]

[(b) A governmental entity with fees established by the Legislature:]

[(i) shall establish the fees defined in Subsection (2), or other actual costs associated with this section through the budget process; and]

[(ii) may use the procedures of Section 63J-1-504 to set fees until the Legislature establishes fees through the budget process:]

[(e) Political subdivisions shall establish fees by ordinance or written formal policy adopted by the governing body:]

[(d) The judiciary shall establish fees by rules of the judicial council:]

[(4)] (3) A governmental entity may choose to fulfill a record request without [charge and is encouraged to do so when] a fee or cost assessment, or for a reduced fee or cost assessment if it determines [that]:

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(a) that waiving or reducing the fee or cost assessment is an appropriate use of taxpayer funds and resources; and

(b) that:

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

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

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

[(5) (4)] A governmental entity may not charge a fee or assess a cost for:

(a) reviewing a record request for a governmental entity to determine whether a single, specifically identified record is subject to disclosure[, except as permitted by Subsection 63G-2-202(1)(a)(ii)] unless searching for, retrieving, reproducing, or classifying the record requires efforts as described in Subsection (2)(a); or

(b) inspecting a readily accessible public record.

[(6) (5)] (a) A person who believes that there has been an unreasonable abuse of discretion in the denial of a fee or cost waiver under [Subsection (4)] this section may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under Section 63G-2-205.

(b) The adjudicative body hearing the appeal has the same authority when a fee or cost waiver or reduction is denied as it has when the inspection of a public record is denied.

[(7) (a)] (6) The governmental entity that receives fees or costs under this section [by a governmental entity subject to Subsection (3)(b)] shall be retained by the governmental entity] shall retain the fees as a dedicated credit[. (b) Those funds shall be used to recover the actual in order to reimburse the governmental entity for the cost and expenses incurred by the governmental entity in providing the requested record or record series.

[(8) (7)] (a) A governmental entity may require payment of past fees or costs and future estimated fees or costs before beginning to process a request if:

(i) fees or costs are expected to exceed $50; or

(ii) the requester has not paid fees or costs from previous requests.

(b) [Any] The governmental entity shall return any prepaid amount [in excess of fees due shall be returned] that exceeds the actual fees and costs due to the requester.
This section does not alter, repeal, or reduce fees established by other statutes or legislative acts.

Notwithstanding Subsection (3)(c), fees for voter registration records shall be set as provided in this Subsection (10):]

The lieutenant governor shall:

(i) after consultation with county clerks, establish uniform fees for voter registration and voter history records that meet the requirements of this section; and

(ii) obtain legislative approval of those fees by following the procedures and requirements of Section 63J-1-504.

Section 8. Section 63G-2-204 is amended to read:

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

(1) A person making a request for a record shall furnish the governmental entity with a written request containing:

(a) the person's name, mailing address, and daytime telephone number, if available; and

(b) a description of the record requested that identifies the record with reasonable specificity.

(2) (a) Subject to Subsection (2)(b), a person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record.

(b) In response to a request for a record, a governmental entity may not provide a record that it has received under Section 63G-2-206 as a shared record if the record was shared for the purpose of auditing, if the governmental entity is authorized by state statute to conduct an audit.

(c) If a governmental entity is prohibited from providing a record under Subsection (2)(b), it shall:

(i) deny the records request; and

(ii) inform the person making the request that records requests must be submitted to the governmental entity that prepares, owns, or retains the record.

(d) A governmental entity may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.
(3) After receiving a request for a record, a governmental entity shall:
(a) review each request that seeks an expedited response and notify, within five business days after receiving the request, each requester that has not demonstrated that their record request benefits the public rather than the person that their response will not be expedited; and
(b) as soon as reasonably possible, but no later than 10 business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person:
   (i) approve the request and provide a copy of the record;
   (ii) deny the request in accordance with the procedures and requirements of Section 63G-2-205;
   (iii) notify the requester that it does not maintain the record requested and provide, if known, the name and address of the governmental entity that does maintain the record; or
   (iv) notify the requester that because of one of the extraordinary circumstances listed in Subsection (5), it cannot immediately approve or deny the request, and include with the notice:
      (A) a description of the circumstances that constitute the extraordinary circumstances;
      and
      (B) the date when the records will be available, consistent with the requirements of Subsection (6).

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

(5) The following circumstances constitute "extraordinary circumstances" that allow a governmental entity to delay approval or denial by an additional period of time as specified in Subsection (6) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (3):
(a) another governmental entity is using the record, in which case the originating governmental entity shall promptly request that the governmental entity currently in possession return the record;
(b) another governmental entity is using the record as part of an audit, and returning the
record before the completion of the audit would impair the conduct of the audit;

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

(ii) the request requires the review or classification of a substantial number of records;

or

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

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

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

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

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

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

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

(a) for claims under Subsection (5)(a), the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work;

(b) for claims under Subsection (5)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;

(c) for claims under Subsections (5)(c), (d), and (e), the governmental entity shall:

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

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

(iii) complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible; and
(iv) for any person that does not establish a right to an expedited response as authorized by Subsection (3)(a), a governmental entity may choose to:

(A) require the person to provide for copying of the records as provided in Subsection 63G-2-201(9); or

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

(d) for claims under Subsection (5)(f), the governmental entity shall either approve or deny the request within five business days after the response time specified for the original request has expired;

(e) for claims under Subsection (5)(g), the governmental entity shall fulfill the request within 15 business days from the date of the original request; or

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

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

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

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

Section 9. Section 63G-2-206 is amended to read:


(1) As used in this section, "legislative entity" means:

(a) the Senate or House of Representatives;

(b) a legislative committee, legislative task force, or legislative commission;

(c) a member of the Senate or House of Representatives; or

(d) a legislative staff employee acting at the request of the Senate, House of Representatives, a legislative committee, a legislative task force, a legislative commission, or a member of the Senate or House of Representatives.

(2) A governmental entity may provide a record [that is] that is classified as
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] the Utah Constitution or state law to conduct an audit
and the auditor determines that the record is needed for that purpose; or
(d) [is one that] collects information for presentence, probationary, or parole purposes; or
(e) (i) is:
(A) the Legislature;
(B) a legislative committee;
(C) a member of the Legislature; or
(D) a legislative staff member acting at the request of the Legislature, a legislative
community, or a member of the Legislature; and]
(ii) (3) A governmental entity may provide a record that is classified as private,
controlled, or protected to a legislative entity when the legislative entity requests the record in
relation to the Legislature's duties including:
(4) (a) the preparation or review of a legislative proposal or legislation;
(4) (b) appropriations; or
(4) (c) an investigation or review conducted by the Legislature or a legislative
community: legislative task force, or legislative commission.
(3) (2) (4) (a) A governmental entity may provide a private, controlled, or protected
record or record series to another governmental entity, a legislative 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 duties and
functions of the governmental entity, legislative entity, political subdivision, government-managed corporation, the federal government, or the other state:
(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)] (8)(b).

[(3)] (5) (a) A governmental entity shall provide a private, controlled, or protected
record to another governmental entity, a legislative 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)] (2)(a), (b), (c), (d), (3), or [(e)] (4).

(b) Subsection [(3)] (5)(a)(iii) applies only if the record is a record described in
Subsection 63G-2-305(4).

[(4)] (6) Before disclosing a record or record series under this section to another
governmental entity, a legislative 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], either by mechanical or electronic transmission,
that [it] the recipient 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)] (7) A governmental entity may disclose a record to another state, the United
States, or a foreign government for the reasons listed in Subsections [(1)] (2) and [(2)] (4)
without complying with the procedures of Subsection [(2)] (4) or [(4)] (6) if disclosure is
authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state
statute.
(a) Subject to Subsections [(6)] [(8)](b) and (c), an entity receiving a record under this section is governed by the same restrictions on disclosure of the private, protected, or controlled record as the originating entity.

(b) A contractor or a private provider may obtain a record or record series under this section only if the originating governmental entity determines and the contractor or private provider gives written assurance to the originating governmental entity that:

(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; and

(ii) the record or record series requested by the contractor or private provider:

(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;

(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)] (9) 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)] (10) 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]
Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

Section 10. Section 63G-2-301 is amended to read:

63G-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 63G-2-201(3)(b) and (6)(a):

(a) laws;

(b) the name, gender, gross compensation, job title, job description, business address, business email address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of a current or former employee or officer of the governmental entity, excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63G-2-305(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 63G-2-303, records or parts of
records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning
commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust
Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or
other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; or

(iv) tax status for real and personal property;

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

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

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

(k) summary data; 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 63G-2-302(1)(ii) Section
63G-2-302].

(3) The following records are normally public, but to the extent that a record is
expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b),
Section 63G-2-302, 63G-2-304, or 63G-2-305:

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

(b) records documenting a contractor's or private provider's compliance with the terms
of a contract with a governmental entity;
(c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;
(d) contracts entered into by a governmental entity;
(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;
(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63G-2-305(35);
(g) chronological logs and initial contact reports;
(h) correspondence by and with a governmental entity in which the governmental entity determines or states an official opinion [upon] about 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 directly 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 an arrest warrant before the warrant is served;
(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] before trial;

[(o)] (m) records that would disclose information relating to formal charges or formal
disciplinary [actions] action 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)] (n) 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)] (o) final audit reports;
[(r)] (p) occupational and professional licenses;
[(s)] (q) business licenses; and
[(t)] (r) a notice of violation, a notice of agency action under Section 63G-4-201, or
similar records used to initiate proceedings for discipline or sanctions against persons regulated
by a governmental entity, but not including records that initiate employee discipline.

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

Section 11. Section 63G-2-302 is amended to read:
63G-2-302. Private records.

(1) The following records are private:
(a) records concerning an individual's eligibility for unemployment insurance benefits,
social services, welfare benefits, or the determination of benefit levels;
(b) records containing data on individuals describing medical history, diagnosis,
condition, treatment, evaluation, or similar medical data;
(c) records of publicly funded libraries that when examined alone or with other records
identify a patron;
(d) records received by or generated by or for:
(i) the Independent Legislative Ethics Commission, except for:
(A) the commission's summary data report that is required under legislative rule; and
(B) any other document that is classified as public under legislative rule; or
(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
unless the record is classified as public under legislative rule;

(e) the Social Security number, home address, personal email address or other personal electronic or online address, personal telephone number, or personal financial information of an applicant or nominee for a position that is received by a Senate confirmation committee;

[(e)] (f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual if:

(i) [if prior to] before the meeting, the chair of the committee determines that release of the records[:(A) reasonably] could be reasonably 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)] (g) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, personal email address or other personal electronic or online address, Social Security number, insurance coverage, marital status, or payroll deductions;

[(g)] (h) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;

[(h)] (i) that part of a record indicating a person's Social Security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2f-203;

[(i)] (j) 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)] (k) a record that[:(i)] contains information about an individual[:(ii)], is voluntarily provided by the individual[:(iii)] and [(iii) goes into] is placed in an electronic database that:

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

[(B)] (ii) 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;
information provided to the Commissioner of Insurance under:

(i) Subsection 31A-23a-115(2)(a);
(ii) Subsection 31A-23a-302(3); or
(iii) Subsection 31A-26-210(3);

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

information provided by an offender that is:

(i) required by the registration requirements of Section 77-27-21.5; and
(ii) not required to be made available to the public under Subsection 77-27-21.5(27);

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

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with, a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or [63G-2-301(3)(m)] (3)(m), or private under Subsection (1)(b);
(b) records describing an individual's finances, except that the following are public:
(i) records described in Subsection 63G-2-301(2);
(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or
(iii) records that must be disclosed in accordance with another statute;
(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;
(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;
(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it; and
(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section 12. Section 63G-2-303 is amended to read:

63G-2-303. Private information concerning certain government employees.

(1) As used in this section:

(a) "At-risk government employee" means a current or former:

(i) peace officer as specified in Section 53-13-102;

(ii) supreme court justice;

(iii) judge of an appellate, district, or juvenile court;

(iv) justice court judge;

(v) judge authorized by Title 39, Chapter 6, Utah Code of Military Justice;

(vi) federal judge;

(vii) federal magistrate judge;

(viii) judge authorized by Armed Forces, Title 10, United States Code;

(ix) United States Attorney;

(x) Assistant United States Attorney;

(xi) a prosecutor appointed pursuant to Armed Forces, Title 10, United States Code;

(xii) a law enforcement official as defined in Section 53-5-711; or
(xiii) a prosecutor authorized by Title 39, Chapter 6, Utah Code of Military Justice.

(b) "Family member" means the spouse, child, sibling, parent, or grandparent of an at-risk government employee who is living with the employee.

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

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

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

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

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

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

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

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

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

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

(b) providing the at-risk government employee requesting the classification with a disclaimer informing the employee that the employee may not receive official announcements affecting the employee's property, including notices about proposed annexations,
(4) A government agency holding records of an at-risk government employee classified as private under this section may release the record or part of the record if:
   (a) the employee or former employee gives written consent;
   (b) a court orders release of the records; or
   (c) the government agency receives a certified death certificate for the employee or former employee.

(5) (a) If the government agency holding the private record receives a subpoena for the records, the government agency shall attempt to notify the at-risk government employee or former employee by mailing a copy of the subpoena to the employee's last-known mailing address together with a request that the employee either:
   (i) authorize release of the record; or
   (ii) within 10 days of the date that the copy and request are mailed, deliver to the government agency holding the private record a copy of a motion to quash filed with the court who issued the subpoena.

(b) The government agency shall comply with the subpoena if the government agency has:
   (i) received permission from the at-risk government employee or former employee to comply with the subpoena;
   (ii) has not received a copy of a motion to quash within 10 days of the date that the copy of the subpoena was mailed; or
   (iii) receives a court order requiring release of the records.

Section 13. Section 63G-2-305 is amended to read:

63G-2-305. Protected records.

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

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:
   (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the
governmental entity to obtain necessary information in the future;
(b) the person submitting the information has a greater interest in prohibiting access
than the public in obtaining access; and
(c) the person submitting the information has provided the governmental entity with
the information specified in Section 63G-2-309;
(3) commercial or financial information acquired or prepared by a governmental entity
to the extent that disclosure would lead to financial speculations in currencies, securities, or
commodities that will interfere with a planned transaction by the governmental entity or cause
substantial financial injury to the governmental entity or state economy;
(4) records the disclosure of which could cause commercial injury to, or confer a
competitive advantage upon, a potential or actual competitor of, a commercial project entity as
defined in Subsection 11-13-103(4);
(5) test questions and answers to be used in future license, certification, registration,
employment, or academic examinations;
(6) records the disclosure of which would impair governmental procurement
proceedings or give an unfair advantage to any person proposing to enter into a contract or
agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
Subsection (6) does not restrict the right of a person to have access to, once the contract or
grant has been awarded, a bid, proposal, or application submitted to or by a governmental
entity in response to:
(a) a request for bids;
(b) a request for proposals;
(c) a grant; or
(d) other similar document;
(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 78B-6-505;

(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,
1267 procedures, policies, or orders not generally known outside of government if disclosure would
1268 interfere with enforcement or audit efforts;
1269 (10) records the disclosure of which would jeopardize the life or safety of an
1270 individual;
1271 (11) records the disclosure of which would jeopardize the security of governmental
1272 property, governmental programs, or governmental recordkeeping systems from damage, theft,
1273 or other appropriation or use contrary to law or public policy;
1274 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
1275 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
1276 with the control and supervision of an offender's incarceration, treatment, probation, or parole;
1277 (13) records that, if disclosed, would reveal recommendations made to the Board of
1278 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
1279 Board of Pardons and Parole, or the Department of Human Services that are based on the
1280 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
1281 jurisdiction;
1282 (14) records and audit workpapers that identify audit, collection, and operational
1283 procedures and methods used by the State Tax Commission, Office of the Utah State Auditor,
1284 or Office of Legislative Auditor General, if disclosure would interfere with audits or
1285 collections;
1286 (15) records of a governmental audit agency relating to an ongoing or planned audit
1287 until the final audit is released;
1288 (16) records prepared by or on behalf of a governmental entity [solely] in reasonable
1289 anticipation of litigation that are not available under the rules of discovery;
1290 (17) records disclosing an attorney's work product, including the mental impressions or
1291 legal theories of an attorney or other representative of a governmental entity [concerning]
1292 involving pending litigation or reasonably anticipated litigation;
1293 (18) records of communications between a governmental entity and an attorney
1294 representing, retained, or employed by the governmental entity if the communications would be
1295 privileged as provided in Section 78B-1-137;
1296 (19) (a) [i] personal files of] a record related to the performance of a legislator's
1297 official governmental duties that is prepared, received, or retained by 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] legislator, except that a record that provides notice of an official legislative action or policy may not be classified as protected under this [section] Subsection (19)(a); and

(b) (i) [an internal] a record disclosing a communication that is [part of the deliberative process in connection with the preparation of legislation] related to the performance of official governmental duties and that is between:

(A) [members of a legislative body] one or more legislators;  
(B) [a member of a legislative body and a member of the legislative body's staff] one or more legislators and one or more legislative staff employees; or

(C) [members of a legislative body's staff] one or more legislative staff employees; and  
(ii) notwithstanding Subsection (19)(b)(i), a [communication that gives notice of legislative action or policy] record that provides notice of official legislative action or policy may not be classified as protected under this [section] Subsection (19);

(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] until the legislation [or course of action] has been introduced, or the legislator 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 introduces the legislation or elects to make the legislation or course of action public;

(21) [research] legislator requests [from legislators to] for staff services from the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and [research] findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) reasonably anticipated 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 as 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 prepared, received, or retained by the governor's office, including budget recommendations, legislative proposals, internal communications, working papers, 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:
   (a) budget analysis;
   (b) revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas; and
   (c) data and working papers associated with a fiscal note for legislation until the legislation has passed;

(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 as 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 relating to research conducted by:

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

(B) 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 before the date that audit is completed and made public; and

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

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

(a) a production facility; or

(b) a magazine;

(43) information:
(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or
(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;
(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;
(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;
(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;
(48) except to the extent that the record is exempt from this chapter [pursuant to] under Section 63G-2-106, records related to an emergency plan or program prepared or maintained by the Division of Homeland Security the disclosure of which would jeopardize:
(a) the safety of the general public; or
(b) the security of governmental property, governmental programs, or the property of a private person who provides information to the Division of Homeland Security;
(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 26-39-501:
(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and
(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;
(51) unless otherwise classified as public under Section 63G-2-301 and except as
provided under Section 41-1a-116, an individual's home address, home telephone number,
personal email address or other personal electronic or online address, or personal mobile phone
number, if:
   (a) the individual is required to provide the information in order to comply with a law,
ordinance, rule, or order of a government entity; and
   (b) the subject of the record has a reasonable expectation that this information will be
kept confidential due to:
      (i) the nature of the law, ordinance, rule, or order; and
      (ii) the individual complying with the law, ordinance, rule, or order;
(52) the name, home address, work addresses, and telephone numbers, and
email address or other personal electronic or online address of an individual that is engaged in,
or that provides goods or services for, medical or scientific research that is:
   (a) conducted within the state system of higher education, as defined in Section
53B-1-102; and
   (b) conducted using animals;
(53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
Private Proposal Program, to the extent not made public by rules made under that chapter;
(54) information collected and a report prepared by the Judicial Performance
Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
the information or report;
(55) (a) records of the Utah Educational Savings Plan created under Section
53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;
   (b) proposals submitted to the Utah Educational Savings Plan; and
   (c) contracts entered into by the Utah Educational Savings Plan and the related
payments;
(56) records contained in the Management Information System created in Section
62A-4a-1003;
(57) records provided or received by the Public Lands Policy Coordinating Office in
furtherance of any contract or other agreement made in accordance with Section 63J-4-603;
information requested by and provided to the Utah State 911 Committee under
Section 53-10-602;

(59) recorded Children's Justice Center investigative interviews, both video and audio,
the release of which are governed by Section 77-37-4; and

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

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

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

Section 14.  Section 63G-2-401 is amended to read:

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

(1) (a) Any person aggrieved by a governmental entity's access determination under
this chapter, including a person not a party to the governmental entity's proceeding, may appeal
the determination within 30 days to the chief administrative officer of the governmental entity
by filing a notice of appeal.

(b) If a governmental entity claims extraordinary circumstances and specifies the date
when the records will be available under Subsection 63G-2-204(3), and, if the requester
believes the extraordinary circumstances do not exist or that the time specified is unreasonable,
the requester may appeal the governmental entity's claim of extraordinary circumstances or date
for compliance within 30 days after notification of a claim of extraordinary circumstances by
the governmental entity, despite the lack of a "determination" or its equivalent under
Subsection 63G-2-204[(7)](8).

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

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

(b) the relief sought.

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

(4) (a) If the appeal involves a record that is the subject of a business confidentiality
claim under Section 63G-2-309, the chief administrative officer shall:

(i) send notice of the requester's appeal to the business confidentiality claimant within
three business days after receiving notice, except that if notice under this section must be given
to more than 35 persons, it shall be given as soon as reasonably possible; and

(ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester within three business days after receiving notice of the requester's appeal.

(b) The claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality.

(5) (a) The chief administrative officer shall make a determination on the appeal within [the following period of time]:

(i) [within] five business days after the chief administrative officer's receipt of the notice of appeal; or

(ii) [within] 12 business days after the governmental entity sends the requester's notice of appeal to a person who submitted a claim of business confidentiality.

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

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

(6) The chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 [if only if the person or party seeking disclosure of the record has established that, by a preponderance of the evidence, the [interests] public interest favoring access [outweigh the interests] outweighs the interest favoring restriction of access.

(7) (a) The governmental entity shall send written notice of the determination of the chief administrative officer to all participants.

(b) If the chief administrative officer affirms the denial in whole or in part, the denial shall include a statement that the requester has the right to appeal the denial to either the records committee or district court, the time limits for filing an appeal, and the name and business address of the executive secretary of the records committee.

(8) (a) A person aggrieved by a governmental entity's classification or designation
determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section.

(b) If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the determination on the appeal shall be made within 30 days after receiving the notice of appeal.

(9) The [duties of the] chief administrative officer may delegate the officer's duties established under this section [may be delegated].

Section 15. Section 63G-2-403 is amended to read:

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

(1) [A] Except as exempted under Part 7, Applicability to Political Subdivisions, the Judiciary, and the Legislature, a petitioner, including an aggrieved person who did not participate in the appeal to the governmental entity's chief administrative officer, may appeal to the records committee by filing a notice of appeal with the executive secretary no later than:

(a) 30 days after the chief administrative officer of the governmental entity has granted or denied the record request in whole or in part, including a denial under Subsection 63G-2-204[(7)](8);

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

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

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

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

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

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

(c) the relief sought.

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

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

(i) schedule a hearing for the records committee to discuss the appeal at the next regularly scheduled committee meeting falling at least 14 days after the date the notice of appeal is filed but no longer than 52 calendar days after the date the notice of appeal was filed.
except that the records committee may schedule an expedited hearing upon application of the petitioner and good cause shown;

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

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

(A) each member of the records committee;

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

(C) any person who made a business confidentiality claim under Section 63G-2-309 for a record that is the subject of the appeal; and

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

(b) (i) The executive secretary of the records committee may decline to schedule a hearing if the record series that is the subject of the appeal has been found by the committee in a previous hearing involving the same government entity to be appropriately classified as private, controlled, or protected.

(ii) [(A)] If the executive secretary of the records committee declines to schedule a hearing, the executive secretary of the records committee shall send a notice to the petitioner indicating that the request for hearing has been denied and the reason for the denial.

[(B) The committee shall make rules to implement this section as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.]

(5) (a) A written statement of facts, reasons, and legal authority in support of the governmental entity's position must be submitted to the executive secretary of the records committee not later than five business days before the hearing.

(b) The governmental entity shall send a copy of the written statement to the petitioner by first class mail, postage prepaid.

(c) The executive secretary shall forward a copy of the written statement to each member of the records committee.

(6) (a) No later than 10 business days after the notice of appeal is sent by the executive secretary, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the records committee.
(b) Any written statement of facts, reasons, and legal authority in support of the
intervener's position shall be filed with the request for intervention.

(c) The person seeking intervention shall provide copies of the statement described in
Subsection (6)(b) to all parties to the proceedings before the records committee.

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

(8) (a) At the hearing, the records committee shall allow the parties to testify, present
evidence, and comment on the issues.

(b) The records committee may allow other interested persons to comment on the
issues.

(9) (a) Subject to Subsection (9)(b), the records committee may review the
disputed records. [However, if]

(b) If the records committee is weighing the various interests under Subsection (11),
the committee must review the disputed records[.] The review shall be [in camera].

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

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

(b) When the subject of a records committee subpoena disobeys or fails to comply with
the subpoena, the records committee may file a motion for an order to compel obedience to the
subpoena with the district court.

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

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

(b) The records committee may, upon consideration and weighing of the various
interests and public policies pertinent to the classification and disclosure or nondisclosure,
order the disclosure of information properly classified as private, controlled, or protected [if]
only if the person or party seeking disclosure of the record has established that, by a
preponderance of the evidence, the public interest favoring access outweighs the interest
favoring restriction of access.

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

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

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

(iii) privacy interests or the public interest in the case of other protected records.

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

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

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

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

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

(13) (a) If the records committee fails to issue a decision within 57 calendar days of the filing of the notice of appeal, that failure shall be considered the equivalent of an order denying the appeal.

(b) The petitioner shall notify the records committee in writing if the petitioner considers the appeal denied.

(14) (a) Unless a notice of intent to appeal is filed under Subsection (14)(b), each party to the proceeding shall comply with the order of the records committee.

(b) If a party disagrees with the order of the records committee, that party may file a notice of intent to appeal the order of the records committee.

(c) If the records committee orders the governmental entity to produce a record and no
appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a record, the governmental entity shall:

(i) produce the record; and

(ii) file a notice of compliance with the records committee.

(d) (i) If the governmental entity that is ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the records committee may do either or both of the following:

(A) impose a civil penalty of up to $500 for each day of continuing noncompliance; or

(B) send written notice of the governmental entity’s noncompliance to:

(I) the governor, for executive branch entities; [the Legislative Management Committee for legislative branch entities; or (III) the Judicial Council, for judicial branch agencies.]

(ii) In imposing a civil penalty, the records committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional.

(15) The records committee shall make rules to implement this section as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 16. Section 63G-2-404 is amended to read:


(1) (a) Any party to a proceeding before the records committee may petition for judicial review by the district court of the records committee's order.

(b) The petition shall be filed no later than 30 days after the date of the records committee's order.

(c) The records committee is a necessary party to the petition for judicial review.

(d) The executive secretary of the records committee shall be served with notice of the petition in accordance with the Utah Rules of Civil Procedure.

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

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

(i) 30 days after the governmental entity has responded to the records request by either providing the requested records or denying the request in whole or in part;
(ii) 35 days after the original request if the governmental entity failed to respond to the request; or

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

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

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

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

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

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

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

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

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

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

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

(6) (a) The district court may review the disputed records. [The review shall be]

(b) If the district court chooses to review the records, the court shall review the records in camera.

(7) The court shall:

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

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

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

(8) (a) The court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected [if] only if the
person or party seeking disclosure of the record has established that, by a preponderance of the
evidence, the public interest favoring access outweighs the interest favoring restriction of
access.

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

Section 17. Section 63G-2-703 is amended to read:

63G-2-703. Applicability to the Legislature and legislative staff offices.

(1) [The] This chapter applies to the Legislature [and its staff offices shall designate
and classify records in accordance with Sections 63G-2-301 through 63G-2-305 as public,
private, controlled, or protected:] as follows:

(a) The Legislature is subject to:

(i) Part 1, General Provisions, except the Legislative Management Committee may
define terms as is necessary to establish a policy described in Subsection (2);

(ii) Part 2, Access to Records, except Sections 63G-2-203 and 63G-2-204;

(iii) Part 3, Classification, except Subsection 63G-2-307(1);

(iv) this section; and

(v) Part 8, Remedies.

(2) The Legislature [and its staff offices are not subject to Section 63G-2-203
or] is exempt from:

(i) Part 4, Appeals[, but shall establish a policy to provide for an appeal process;

(ii) Part 5, State Records Committee[, or], but shall establish a policy to provide for an
appellate body to hear an appeal from a denial of access to a record or a dispute related to a fee
and cost assessment;

(iii) Part 6, Collection of Information and Accuracy of Records[, but shall establish a
policy relating to the retention and disposition of records;

[(b) The Legislature is subject to only the following sections in Part 9, Archives and
Records Service: Sections 63A-12-102, 63A-12-106, and 63G-2-310:]

(iv) Part 7, Applicability to Political Subdivisions, the Judiciary, and the Legislature.
except for this section; and

(v) Part 9, Public Associations, except to the extent that the part may apply to legislators or legislative staff employees acting in a private capacity.

[(3) (2) The Legislature, through the Legislative Management Committee[:(a)], shall establish policies [to handle requests for classification, designation:] relating to:
(a) receiving, processing, and responding to a record request, including time periods and procedures for the record request process;
(b) classifying or designating a record;
(c) fees[,] and costs;
(d) access[,] denial[,] to a record;
(e) denial of access to a record;
(f) segregation[,] of a record;
(g) appeals[,] including time periods and procedures for the appeals process;
(h) ownership, management, and retention[,] of a record; and
(i) amendment of [records; and] a record.
[(b) may establish an appellate board to hear appeals from denials of access.]
[(4) Policies shall include reasonable times for responding to access requests consistent with the provisions of Part 2, Access to Records, fees, and reasonable time limits for appeals.]

[(3) (5) Upon request, the state archivist shall:
(a) assist with and advise concerning the establishment of a records management program in the Legislature; and
(b) as required by the Legislature, provide program services similar to those available to the executive branch of government, as provided in this chapter and Title 63A, Chapter 12, [Part 1, Archives and Records Service] Public Records Management Act.

(4) The Legislature is not subject to Title 63A, Chapter 12, Public Records Management Act, except for compliance with Sections 63A-12-102 and 63A-12-106.

Section 18. Section 63G-2-803 is amended to read:

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

(1) Neither the governmental entity, nor any officer or employee of the governmental entity, is liable for damages resulting from the release of a record where the person or entity requesting the record presented evidence of authority to obtain the record.
(2) Neither the governmental entity, nor any officer or employee of the governmental entity, is liable for damages arising from the negligent disclosure of records classified as private under Section 63G-2-302(1)(f) unless:

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

(b) the current or former government employee had previously filed the notice required by Section 63G-2-303 and the government entity did not take reasonable steps to preclude access or distribution of the record or the release of the record was otherwise willfully or grossly negligent.

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

This bill repeals:

Section 63G-2-102, Legislative intent.

Section 20. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override. This bill takes effect on July 1, 2011.

Legislative Review Note
as of 3-1-11 3:05 PM

Office of Legislative Research and General Counsel
FISCAL NOTE

SHORT TITLE: Government Records Amendments

SPONSOR: Dougall, J.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))
Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))
Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))
Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.

3/1/2011, 04:00 PM, Lead Analyst: Allred, S./Attorney: ENW
Office of the Legislative Fiscal Analyst