

Senator Curtis S. Bramble proposes the following substitute bill:

GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT

AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of the Government Records Access and Management Act.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "record";
- ▶ modifies a provision relating to records that may be classified as protected;
- ▶ authorizes a court to award an attorney fee and costs against a person, other than a

governmental entity or political subdivision, that actively advocates in opposition to disclosure of a record, if the requester substantially prevails; and

- ▶ modifies a provision limiting an award of an attorney fee and costs to those incurred after a specified period.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 **63G-2-103**, as last amended by Laws of Utah 2023, Chapters 16, 173, 231, and 516

27 **63G-2-107**, as last amended by Laws of Utah 2023, Chapter 173

28 **63G-2-305**, as last amended by Laws of Utah 2023, Chapters 1, 16, 205, and 329

29 **63G-2-802**, as last amended by Laws of Utah 2022, Chapter 388



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

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

33 **63G-2-103. Definitions.**

34 As used in this chapter:

35 (1) "Audit" means:

36 (a) a systematic examination of financial, management, program, and related records

37 for the purpose of determining the fair presentation of financial statements, adequacy of

38 internal controls, or compliance with laws and regulations; or

39 (b) a systematic examination of program procedures and operations for the purpose of

40 determining their effectiveness, economy, efficiency, and compliance with statutes and

41 regulations.

42 (2) "Chronological logs" mean the regular and customary summary records of law

43 enforcement agencies and other public safety agencies that show:

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

45 and

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

47 (3) "Classification," "classify," and their derivative forms mean determining whether a

48 record series, record, or information within a record is public, private, controlled, protected, or

49 exempt from disclosure under Subsection **63G-2-201(3)(b)**.

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

51 (i) a series of instructions or statements that permit the functioning of a computer

52 system in a manner designed to provide storage, retrieval, and manipulation of data from the

53 computer system; and

54 (ii) any associated documentation and source material that explain how to operate the

55 computer program.

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

- 57 (i) the original data, including numbers, text, voice, graphics, and images;
- 58 (ii) analysis, compilation, and other manipulated forms of the original data produced by
59 use of the program; or
- 60 (iii) the mathematical or statistical formulas, excluding the underlying mathematical
61 algorithms contained in the program, that would be used if the manipulated forms of the
62 original data were to be produced manually.
- 63 (5) (a) "Contractor" means:
- 64 (i) any person who contracts with a governmental entity to provide goods or services
65 directly to a governmental entity; or
- 66 (ii) any private, nonprofit organization that receives funds from a governmental entity.
- 67 (b) "Contractor" does not mean a private provider.
- 68 (6) "Controlled record" means a record containing data on individuals that is controlled
69 as provided by Section [63G-2-304](#).
- 70 (7) "Designation," "designate," and their derivative forms mean indicating, based on a
71 governmental entity's familiarity with a record series or based on a governmental entity's
72 review of a reasonable sample of a record series, the primary classification that a majority of
73 records in a record series would be given if classified and the classification that other records
74 typically present in the record series would be given if classified.
- 75 (8) "Elected official" means each person elected to a state office, county office,
76 municipal office, school board or school district office, special district office, or special service
77 district office, but does not include judges.
- 78 (9) "Explosive" means a chemical compound, device, or mixture:
- 79 (a) commonly used or intended for the purpose of producing an explosion; and
- 80 (b) that contains oxidizing or combustive units or other ingredients in proportions,
81 quantities, or packing so that:
- 82 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
83 compound or mixture may cause a sudden generation of highly heated gases; and
- 84 (ii) the resultant gaseous pressures are capable of:
- 85 (A) producing destructive effects on contiguous objects; or
- 86 (B) causing death or serious bodily injury.
- 87 (10) "Government audit agency" means any governmental entity that conducts an audit.

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

89 (i) executive department agencies of the state, the offices of the governor, lieutenant
90 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
91 the Board of Examiners, the National Guard, the Career Service Review Office, the State
92 Board of Education, the Utah Board of Higher Education, and the State Archives;

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

97 (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar
98 administrative units in the judicial branch;

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

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

104 (b) "Governmental entity" also means:

105 (i) every office, agency, board, bureau, committee, department, advisory board, or
106 commission of an entity listed in Subsection (11)(a) that is funded or established by the
107 government to carry out the public's business;

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

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

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

112 (v) the Utah Independent Redistricting Commission; and

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

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

117 (12) "Gross compensation" means every form of remuneration payable for a given
118 period to an individual for services provided including salaries, commissions, vacation pay,

119 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any
120 similar benefit received from the individual's employer.

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

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

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

127 (ii) names of victims;

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

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

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

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

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

139 (c) Initial contact reports do not include accident reports, as that term is described in
140 Title 41, Chapter 6a, Part 4, Accident Responsibilities.

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

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

144 (17) "Person" means:

145 (a) an individual;

146 (b) a nonprofit or profit corporation;

147 (c) a partnership;

148 (d) a sole proprietorship;

149 (e) other type of business organization; or

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

151 (18) "Personal identifying information" means the same as that term is defined in
152 Section [63A-12-100.5](#).

153 (19) "Privacy annotation" means the same as that term is defined in Section
154 [63A-12-100.5](#).

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

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

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

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

163 (24) "Reasonable search" means a search that is:

164 (a) reasonable in scope and intensity; and

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

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

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

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

173 (b) "Record" does not mean:

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

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

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

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

- 181 (iii) material that is legally owned by an individual in the individual's private capacity;
- 182 (iv) material to which access is limited by the laws of copyright or patent unless the
183 copyright or patent is owned by a governmental entity or political subdivision;
- 184 (v) proprietary software;
- 185 (vi) junk mail or a commercial publication received by a governmental entity or an
186 official or employee of a governmental entity;
- 187 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections
188 of a library open to the public;
- 189 (viii) material that is cataloged, indexed, or inventoried and contained in the collections
190 of a library open to the public, regardless of physical form or characteristics of the material;
- 191 (ix) a daily calendar;
- 192 ~~(x) [or other personal]~~ (x) a note prepared by the originator for the originator's ~~[personal]~~
193 own use or for the ~~[personal]~~ use of an individual for whom the originator is working;
- 194 ~~[(x)]~~ (xi) a computer program that is developed or purchased by or for any
195 governmental entity for its own use;
- 196 ~~[(xi)]~~ (xii) a note or internal memorandum prepared as part of the deliberative process
197 by:
- 198 (A) a member of the judiciary;
- 199 (B) an administrative law judge;
- 200 (C) a member of the Board of Pardons and Parole; or
- 201 (D) a member of any other body, other than an association or appeals panel as defined
202 in Section [53G-7-1101](#), charged by law with performing a quasi-judicial function;
- 203 ~~[(xii)]~~ (xiii) a telephone number or similar code used to access a mobile
204 communication device that is used by an employee or officer of a governmental entity,
205 provided that the employee or officer of the governmental entity has designated at least one
206 business telephone number that is a public record as provided in Section [63G-2-301](#);
- 207 ~~[(xiii)]~~ (xiv) information provided by the Public Employees' Benefit and Insurance
208 Program, created in Section [49-20-103](#), to a county to enable the county to calculate the
209 amount to be paid to a health care provider under Subsection [17-50-319\(2\)\(e\)\(ii\)](#);
- 210 ~~[(xiv)]~~ (xv) information that an owner of unimproved property provides to a local
211 entity as provided in Section [11-42-205](#);

212 [~~(xv)~~] (xvi) a video or audio recording of an interview, or a transcript of the video or
213 audio recording, that is conducted at a Children's Justice Center established under Section
214 [67-5b-102](#);

215 [~~(xvi)~~] (xvii) child sexual abuse material, as defined by Section [76-5b-103](#);

216 [~~(xvii)~~] (xviii) before final disposition of an ethics complaint occurs, a video or audio
217 recording of the closed portion of a meeting or hearing of:

218 (A) a Senate or House Ethics Committee;

219 (B) the Independent Legislative Ethics Commission;

220 (C) the Independent Executive Branch Ethics Commission, created in Section
221 [63A-14-202](#); or

222 (D) the Political Subdivisions Ethics Review Commission established in Section
223 [63A-15-201](#); or

224 [~~(xviii)~~] (xix) confidential communication described in Section [58-60-102](#), [58-61-102](#),
225 or [58-61-702](#).

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

228 (27) "Records officer" means the individual appointed by the chief administrative
229 officer of each governmental entity, or the political subdivision to work with state archives in
230 the care, maintenance, scheduling, designation, classification, disposal, and preservation of
231 records.

232 (28) "Schedule," "scheduling," and their derivative forms mean the process of
233 specifying the length of time each record series should be retained by a governmental entity for
234 administrative, legal, fiscal, or historical purposes and when each record series should be
235 transferred to the state archives or destroyed.

236 (29) "Sponsored research" means research, training, and other sponsored activities as
237 defined by the federal Executive Office of the President, Office of Management and Budget:

238 (a) conducted:

239 (i) by an institution within the state system of higher education defined in Section
240 [53B-1-102](#); and

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

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

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

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

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

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

249 (32) "State Records Committee" means the State Records Committee created in
250 Section 63G-2-501.

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

254 Section 2. Section 63G-2-107 is amended to read:

255 **63G-2-107. Disclosure of records subject to federal law or other provisions of**
256 **state law.**

257 (1) (a) The disclosure of a record to which access is governed or limited pursuant to
258 court rule, another state statute, federal statute, or federal regulation, including a record for
259 which access is governed or limited as a condition of participation in a state or federal program
260 or for receiving state or federal funds, is governed by the specific provisions of that statute,
261 rule, or regulation.

262 (b) Except as provided in Subsection (2), this chapter applies to records described in
263 Subsection (1)(a) to the extent that this chapter is not inconsistent with the statute, rule, or
264 regulation.

265 (2) Except as provided in Subsection (3), this chapter does not apply to a record
266 containing protected health information as defined in 45 C.F.R., Part 164, Standards for
267 Privacy of Individually Identifiable Health Information, if the record is:

268 (a) controlled or maintained by a governmental entity; and

269 (b) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually
270 Identifiable Health Information.

271 ~~[(c)]~~ (3) The disclosure of an education record, as defined in the Family Educational
272 Rights and Privacy Act, 34 C.F.R. Part 99, that is controlled or maintained by a governmental
273 entity ~~[shall be]~~ is governed by the Family Educational Rights and Privacy Act, 34 C.F.R. Part

274 99.

275 [~~3~~] (4) This section does not exempt any record or record series from the provisions
276 of Subsection 63G-2-601(1).

277 Section 3. Section 63G-2-305 is amended to read:

278 **63G-2-305. Protected records.**

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

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

282 (2) commercial information or nonindividual financial information obtained from a
283 person if:

284 (a) disclosure of the information could reasonably be expected to result in unfair
285 competitive injury to the person submitting the information or would impair the ability of the
286 governmental entity to obtain necessary information in the future;

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

289 (c) the person submitting the information has provided the governmental entity with
290 the information specified in Section 63G-2-309;

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

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

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

300 (6) records, the disclosure of which would impair governmental procurement
301 proceedings or give an unfair advantage to any person proposing to enter into a contract or
302 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
303 Subsection (6) does not restrict the right of a person to have access to, after the contract or
304 grant has been awarded and signed by all parties:

305 (a) a bid, proposal, application, or other information submitted to or by a governmental
306 entity in response to:

307 (i) an invitation for bids;

308 (ii) a request for proposals;

309 (iii) a request for quotes;

310 (iv) a grant; or

311 (v) other similar document; or

312 (b) an unsolicited proposal, as defined in Section [63G-6a-712](#);

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

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

318 (b) (i) a final determination is made not to enter into a contract that relates to the
319 subject of the request for information; and

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

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

325 (a) public interest in obtaining access to the information is greater than or equal to the
326 governmental entity's need to acquire the property on the best terms possible;

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

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

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

334 (e) the property under consideration for public acquisition is a single family residence
335 and the governmental entity seeking to acquire the property has initiated negotiations to acquire

336 the property as required under Section 78B-6-505;

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

341 (a) the public interest in access is greater than or equal to the interests in restricting
342 access, including the governmental entity's interest in maximizing the financial benefit of the
343 transaction; or

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

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

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

352 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
353 proceedings;

354 (c) would create a danger of depriving a person of a right to a fair trial or impartial
355 hearing;

356 (d) reasonably could be expected to disclose the identity of a source who is not
357 generally known outside of government and, in the case of a record compiled in the course of
358 an investigation, disclose information furnished by a source not generally known outside of
359 government if disclosure would compromise the source; or

360 (e) reasonably could be expected to disclose investigative or audit techniques,
361 procedures, policies, or orders not generally known outside of government if disclosure would
362 interfere with enforcement or audit efforts;

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

365 (12) records the disclosure of which would jeopardize the security of governmental
366 property, governmental programs, or governmental recordkeeping systems from damage, theft,

367 or other appropriation or use contrary to law or public policy;

368 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
369 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
370 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

371 (14) records that, if disclosed, would reveal recommendations made to the Board of
372 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
373 Board of Pardons and Parole, or the Department of Health and Human Services that are based
374 on the employee's or contractor's supervision, diagnosis, or treatment of any person within the
375 board's jurisdiction;

376 (15) records and audit workpapers that identify audit, collection, and operational
377 procedures and methods used by the State Tax Commission, if disclosure would interfere with
378 audits or collections;

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

381 (17) records that are subject to the attorney client privilege;

382 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
383 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
384 quasi-judicial, or administrative proceeding;

385 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
386 from a member of the Legislature; and

387 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
388 legislative action or policy may not be classified as protected under this section; and

389 (b) (i) an internal communication that is part of the deliberative process in connection
390 with the preparation of legislation between:

391 (A) members of a legislative body;

392 (B) a member of a legislative body and a member of the legislative body's staff; or

393 (C) members of a legislative body's staff; and

394 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
395 legislative action or policy may not be classified as protected under this section;

396 (20) (a) records in the custody or control of the Office of Legislative Research and
397 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated

398 legislation or contemplated course of action before the legislator has elected to support the
399 legislation or course of action, or made the legislation or course of action public; and

400 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
401 Office of Legislative Research and General Counsel is a public document unless a legislator
402 asks that the records requesting the legislation be maintained as protected records until such
403 time as the legislator elects to make the legislation or course of action public;

404 (21) ~~[research requests from legislators to the Office of Legislative Research and~~
405 ~~General Counsel or the Office of the Legislative Fiscal Analyst]~~ a research request from a
406 legislator to a legislative staff member and research findings prepared in response to ~~[these~~
407 ~~requests]~~ the request;

408 (22) drafts, unless otherwise classified as public;

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

410 (a) collective bargaining; or

411 (b) imminent or pending litigation;

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

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

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

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

423 (28) records of an institution within the state system of higher education defined in
424 Section [53B-1-102](#) regarding tenure evaluations, appointments, applications for admissions,
425 retention decisions, and promotions, which could be properly discussed in a meeting closed in
426 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
427 the final decisions about tenure, appointments, retention, promotions, or those students
428 admitted, may not be classified as protected under this section;

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

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

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

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

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

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

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

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

456 (37) the name of a donor or a prospective donor to a governmental entity, including an
457 institution within the state system of higher education defined in Section [53B-1-102](#), and other
458 information concerning the donation that could reasonably be expected to reveal the identity of
459 the donor, provided that:

- 460 (a) the donor requests anonymity in writing;
- 461 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
462 classified protected by the governmental entity under this Subsection (37); and
- 463 (c) except for an institution within the state system of higher education defined in
464 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
465 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
466 over the donor, a member of the donor's immediate family, or any entity owned or controlled
467 by the donor or the donor's immediate family;
- 468 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
469 73-18-13;
- 470 (39) a notification of workers' compensation insurance coverage described in Section
471 34A-2-205;
- 472 (40) (a) the following records of an institution within the state system of higher
473 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
474 or received by or on behalf of faculty, staff, employees, or students of the institution:
- 475 (i) unpublished lecture notes;
- 476 (ii) unpublished notes, data, and information:
- 477 (A) relating to research; and
- 478 (B) of:
- 479 (I) the institution within the state system of higher education defined in Section
480 53B-1-102; or
- 481 (II) a sponsor of sponsored research;
- 482 (iii) unpublished manuscripts;
- 483 (iv) creative works in process;
- 484 (v) scholarly correspondence; and
- 485 (vi) confidential information contained in research proposals;
- 486 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
487 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 488 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 489 (41) (a) records in the custody or control of the Office of the Legislative Auditor
490 General that would reveal the name of a particular legislator who requests a legislative audit

491 prior to the date that audit is completed and made public; and

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

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

499 (a) a production facility; or

500 (b) a magazine;

501 (43) information contained in the statewide database of the Division of Aging and
502 Adult Services created by Section [26B-6-210](#);

503 (44) information contained in the Licensing Information System described in Title 80,
504 Chapter 2, Child Welfare Services;

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

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

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

512 (48) except to the extent that the record is exempt from this chapter pursuant to Section
513 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or
514 prepared or maintained by the Division of Emergency Management, and the disclosure of
515 which would jeopardize:

516 (a) the safety of the general public; or

517 (b) the security of:

518 (i) governmental property;

519 (ii) governmental programs; or

520 (iii) the property of a private person who provides the Division of Emergency
521 Management information;

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

526 (50) as provided in Section 26B-2-408:

527 (a) information or records held by the Department of Health and Human Services
528 related to a complaint regarding a child care program or residential child care which the
529 department is unable to substantiate; and

530 (b) information or records related to a complaint received by the Department of Health
531 and Human Services from an anonymous complainant regarding a child care program or
532 residential child care;

533 (51) unless otherwise classified as public under Section 63G-2-301 and except as
534 provided under Section 41-1a-116, an individual's home address, home telephone number, or
535 personal mobile phone number, if:

536 (a) the individual is required to provide the information in order to comply with a law,
537 ordinance, rule, or order of a government entity; and

538 (b) the subject of the record has a reasonable expectation that this information will be
539 kept confidential due to:

540 (i) the nature of the law, ordinance, rule, or order; and

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

542 (52) the portion of the following documents that contains a candidate's residential or
543 mailing address, if the candidate provides to the filing officer another address or phone number
544 where the candidate may be contacted:

545 (a) a declaration of candidacy, a nomination petition, or a certificate of nomination,
546 described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408,
547 20A-9-408.5, 20A-9-502, or 20A-9-601;

548 (b) an affidavit of impecuniosity, described in Section 20A-9-201; or

549 (c) a notice of intent to gather signatures for candidacy, described in Section
550 20A-9-408;

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

553 (a) conducted within the state system of higher education, as defined in Section
554 [53B-1-102](#); and

555 (b) conducted using animals;

556 (54) in accordance with Section [78A-12-203](#), any record of the Judicial Performance
557 Evaluation Commission concerning an individual commissioner's vote, in relation to whether a
558 judge meets or exceeds minimum performance standards under Subsection [78A-12-203\(4\)](#), and
559 information disclosed under Subsection [78A-12-203\(5\)\(e\)](#);

560 (55) information collected and a report prepared by the Judicial Performance
561 Evaluation Commission concerning a judge, unless Section [20A-7-702](#) or Title 78A, Chapter
562 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
563 the information or report;

564 (56) records provided or received by the Public Lands Policy Coordinating Office in
565 furtherance of any contract or other agreement made in accordance with Section [63L-11-202](#);

566 (57) information requested by and provided to the 911 Division under Section
567 [63H-7a-302](#);

568 (58) in accordance with Section [73-10-33](#):

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

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

573 (59) the following records in the custody or control of the Office of Inspector General
574 of Medicaid Services, created in Section [63A-13-201](#):

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

581 (b) records and audit workpapers to the extent they would disclose the identity of a
582 person who, during the course of an investigation or audit, communicated the existence of any
583 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or

584 regulation adopted under the laws of this state, a political subdivision of the state, or any
585 recognized entity of the United States, if the information was disclosed on the condition that
586 the identity of the person be protected;

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

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

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

594 (60) records that reveal methods used by the Office of Inspector General of Medicaid
595 Services, the fraud unit, or the Department of Health and Human Services, to discover
596 Medicaid fraud, waste, or abuse;

597 (61) information provided to the Department of Health and Human Services or the
598 Division of Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections
599 58-68-304(3) and (4);

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

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

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

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

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

607 (c) any administrative notes or records made or created for the purpose of, or used to,
608 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim
609 Reparations Fund;

610 (65) an audio or video recording created by a body-worn camera, as that term is
611 defined in Section 77-7a-103, that records sound or images inside a hospital or health care
612 facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care
613 provider, as that term is defined in Section 78B-3-403, or inside a human service program as
614 that term is defined in Section 26B-2-101, except for recordings that:

- 615 (a) depict the commission of an alleged crime;
- 616 (b) record any encounter between a law enforcement officer and a person that results in
617 death or bodily injury, or includes an instance when an officer fires a weapon;
- 618 (c) record any encounter that is the subject of a complaint or a legal proceeding against
619 a law enforcement officer or law enforcement agency;
- 620 (d) contain an officer involved critical incident as defined in Subsection
621 76-2-408(1)(f); or
- 622 (e) have been requested for reclassification as a public record by a subject or
623 authorized agent of a subject featured in the recording;
- 624 (66) a record pertaining to the search process for a president of an institution of higher
625 education described in Section 53B-2-102, except for application materials for a publicly
626 announced finalist;
- 627 (67) an audio recording that is:
 - 628 (a) produced by an audio recording device that is used in conjunction with a device or
629 piece of equipment designed or intended for resuscitating an individual or for treating an
630 individual with a life-threatening condition;
 - 631 (b) produced during an emergency event when an individual employed to provide law
632 enforcement, fire protection, paramedic, emergency medical, or other first responder service:
 - 633 (i) is responding to an individual needing resuscitation or with a life-threatening
634 condition; and
 - 635 (ii) uses a device or piece of equipment designed or intended for resuscitating an
636 individual or for treating an individual with a life-threatening condition; and
 - 637 (c) intended and used for purposes of training emergency responders how to improve
638 their response to an emergency situation;
- 639 (68) records submitted by or prepared in relation to an applicant seeking a
640 recommendation by the Research and General Counsel Subcommittee, the Budget
641 Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an
642 employment position with the Legislature;
- 643 (69) work papers as defined in Section 31A-2-204;
- 644 (70) a record made available to Adult Protective Services or a law enforcement agency
645 under Section 61-1-206;

646 (71) a record submitted to the Insurance Department in accordance with Section
647 31A-37-201;

648 (72) a record described in Section 31A-37-503;

649 (73) any record created by the Division of Professional Licensing as a result of
650 Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);

651 (74) a record described in Section 72-16-306 that relates to the reporting of an injury
652 involving an amusement ride;

653 (75) except as provided in Subsection 63G-2-305.5(1), the signature of an individual
654 on a political petition, or on a request to withdraw a signature from a political petition,
655 including a petition or request described in the following titles:

656 (a) Title 10, Utah Municipal Code;

657 (b) Title 17, Counties;

658 (c) Title 17B, Limited Purpose Local Government Entities - Special Districts;

659 (d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and

660 (e) Title 20A, Election Code;

661 (76) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in
662 a voter registration record;

663 (77) except as provided in Subsection 63G-2-305.5(3), any signature, other than a
664 signature described in Subsection (75) or (76), in the custody of the lieutenant governor or a
665 local political subdivision collected or held under, or in relation to, Title 20A, Election Code;

666 (78) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part
667 5, Victims Guidelines for Prosecutors Act;

668 (79) a record submitted to the Insurance Department under Section 31A-48-103;

669 (80) personal information, as defined in Section 63G-26-102, to the extent disclosure is
670 prohibited under Section 63G-26-103;

671 (81) an image taken of an individual during the process of booking the individual into
672 jail, unless:

673 (a) the individual is convicted of a criminal offense based upon the conduct for which
674 the individual was incarcerated at the time the image was taken;

675 (b) a law enforcement agency releases or disseminates the image;

676 (i) after determining that the individual is a fugitive or an imminent threat to an

677 individual or to public safety and releasing or disseminating the image will assist in
678 apprehending the individual or reducing or eliminating the threat; or
679 (ii) to a potential witness or other individual with direct knowledge of events relevant
680 to a criminal investigation or criminal proceeding for the purpose of identifying or locating an
681 individual in connection with the criminal investigation or criminal proceeding; or
682 (c) a judge orders the release or dissemination of the image based on a finding that the
683 release or dissemination is in furtherance of a legitimate law enforcement interest;
684 (82) a record:
685 (a) concerning an interstate claim to the use of waters in the Colorado River system;
686 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a
687 representative from another state or the federal government as provided in Section
688 [63M-14-205](#); and
689 (c) the disclosure of which would:
690 (i) reveal a legal strategy relating to the state's claim to the use of the water in the
691 Colorado River system;
692 (ii) harm the ability of the Colorado River Authority of Utah or river commissioner to
693 negotiate the best terms and conditions regarding the use of water in the Colorado River
694 system; or
695 (iii) give an advantage to another state or to the federal government in negotiations
696 regarding the use of water in the Colorado River system;
697 (83) any part of an application described in Section [63N-16-201](#) that the Governor's
698 Office of Economic Opportunity determines is nonpublic, confidential information that if
699 disclosed would result in actual economic harm to the applicant, but this Subsection (83) may
700 not be used to restrict access to a record evidencing a final contract or approval decision;
701 (84) the following records of a drinking water or wastewater facility:
702 (a) an engineering or architectural drawing of the drinking water or wastewater facility;
703 and
704 (b) except as provided in Section [63G-2-106](#), a record detailing tools or processes the
705 drinking water or wastewater facility uses to secure, or prohibit access to, the records described
706 in Subsection (84)(a);
707 (85) a statement that an employee of a governmental entity provides to the

708 governmental entity as part of the governmental entity's personnel or administrative
709 investigation into potential misconduct involving the employee if the governmental entity:

710 (a) requires the statement under threat of employment disciplinary action, including
711 possible termination of employment, for the employee's refusal to provide the statement; and
712 (b) provides the employee assurance that the statement cannot be used against the
713 employee in any criminal proceeding;

714 (86) any part of an application for a Utah Fits All Scholarship account described in
715 Section [53F-6-402](#) or other information identifying a scholarship student as defined in Section
716 [53F-6-401](#); and

717 (87) a record:

718 (a) concerning a claim to the use of waters in the Great Salt Lake;

719 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a
720 person concerning the claim, including a representative from another state or the federal
721 government; and

722 (c) the disclosure of which would:

723 (i) reveal a legal strategy relating to the state's claim to the use of the water in the Great
724 Salt Lake;

725 (ii) harm the ability of the Great Salt Lake commissioner to negotiate the best terms
726 and conditions regarding the use of water in the Great Salt Lake; or

727 (iii) give an advantage to another person including another state or to the federal
728 government in negotiations regarding the use of water in the Great Salt Lake.

729 Section 4. Section **63G-2-802** is amended to read:

730 **63G-2-802. Injunction -- Attorney fees and costs.**

731 (1) As used in this section, "defending party" means:

732 (a) a governmental entity or political subdivision:

733 (i) whose access denial is the subject of a petition for judicial review under Section
734 [63G-2-404](#); and

735 (ii) that defends the access denial in an action for judicial review under Section
736 [63G-2-404](#); or

737 (b) a person, other than the governmental entity or political subdivision described in
738 Subsection (1)(a), that actively advocates in the action for judicial review in opposition to

739 disclosure of the record that is the subject of judicial review.

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

742 ~~[(2)]~~ (3) (a) A district court may assess against ~~[any governmental entity or political~~
743 ~~subdivision]~~ a defending party reasonable attorney fees and costs reasonably incurred in
744 connection with a judicial appeal to determine whether a requester is entitled to access to
745 records under a records request, if the requester substantially prevails.

746 (b) In determining whether to award attorney fees or costs under this section, the court
747 shall consider:

748 (i) the public benefit derived from the case;

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

750 (iii) whether the ~~[governmental entity's or political subdivision's]~~ defending party's
751 actions had a reasonable basis.

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

754 ~~[(3)]~~ (4) Neither attorney fees nor costs may be awarded for fees or costs incurred
755 during administrative proceedings.

756 ~~[(4)]~~ (5) Notwithstanding Subsection ~~[(2)]~~ (3), a court may ~~[only]~~ award attorney fees
757 and costs incurred in connection with appeals to district courts under Subsection 63G-2-404(2)
758 only if the attorney fees and costs were incurred 20 or more days after the requester provided
759 ~~[to the governmental entity or political subdivision a statement of position that adequately~~
760 ~~explains the basis for the requester's position]:~~

761 (a) an adequate explanation of the basis for the requester's position, regardless of how
762 the explanation is communicated or whether the explanation is a part of or outside an
763 administrative or court proceeding; and

764 (b) to the governmental entity, political subdivision, or other person against which the
765 requester seeks an award of attorney fees and costs.

766 ~~[(5)]~~ (6) Except for the waiver of immunity in Subsection 63G-7-301(2)(e), a claim for
767 attorney fees or costs as provided in this section is not subject to Chapter 7, Governmental
768 Immunity Act of Utah.

769 Section 5. **Effective date.**

770

This bill takes effect on May 1, 2024.