

# OPEN GOVERNMENT GUIDE

Access to Public Records  
and Meetings in

UTAH

**REPORTERS  
COMMITTEE**  
FOR FREEDOM OF THE PRESS

Sixth Edition  
2011



# OPEN GOVERNMENT GUIDE

## OPEN RECORDS AND MEETINGS LAWS IN

# UTAH

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**SIXTH EDITION  
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Previously Titled  
Tapping Officials' Secrets

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## Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

## User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

*Following the outline.* Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, [www.rcfp.org/ogg](http://www.rcfp.org/ogg). The Internet version of the outlines allows you to search the database and compare the law in different states.

*Updates:* The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at [www.rcfp.org/ogg](http://www.rcfp.org/ogg). This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.



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**FOREWORD**

Utah's statutory scheme guarantees public access to government records and meetings subject to certain exceptions discussed below.

*Access to Government Records.* Utah's Government Records Access and Management Act ("GRAMA") states that "[e]very person has the right to inspect a public record free of charge, and the right to take a copy of a public record . . ." Utah Code Ann. § 63G-2-201(1). Under GRAMA, "a record is public unless otherwise expressly provided by statute." *Id.* § 63G-2-201(2). For example, records classified as "private," "controlled," or "protected" are not public records. *Id.* § 63G-2-201(3)(a).

Enacted in 1991 and effective July 1, 1992, GRAMA replaced the "Information Practices Act" and the "Public and Private Writings Act," both of which previously governed access to government records in Utah.

In enacting GRAMA, "the Legislature expressly recognize[d] two constitutional rights: (a) the public's right of access to information concerning the conduct of the public's business; and (b) the right of privacy in relation to personal data gathered by governmental entities." *Id.* § 63G-2-102(1). In addition, the Legislature "recognize[d] a public policy interest in allowing a government to restrict access to certain records . . . for the public good." *Id.* § 63G-2-102(2). The Legislature also stated that GRAMA's purpose was to:

- (a) promote the public's right of easy and reasonable access to unrestricted public records;
- (b) specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access;
- (c) prevent abuse of confidentiality by government entities by permitting confidential treatment of records only as provided in this chapter;
- (d) provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and which are consistent with nationwide standards of information practices;
- (e) favor public access when, in the application of this act, countervailing interests are of equal weight; and
- (f) establish fair and reasonable records management practices.

*Id.* § 63G-2-102(3).

These public policies are consistent with a leading pre-GRAMA Utah Supreme Court decision, in which the court stated that "it is the policy of this state that public records be kept open for public inspection in order to prevent secrecy in public affairs." *KUTV Inc. v. Utah State Bd. of Educ.*, 689 P.2d 1357, 1361 (Utah 1984). Therefore, "[t]he presumption . . . has always been [in favor of] public access, subject only to specific statutory restrictions, personal privacy rights, and countervailing public policy," and an agency seeking to withhold information from the public bears the burden to justify its actions. *Id.*

The Utah Supreme Court recently held that courts reviewing GRAMA requests should apply the Legislature's "clear and preeminent intent" to favor public disclosure when "countervailing interests are of equal weight." *Deseret News Publ'g Co. v. Salt Lake County*, 2008 UT 26, ¶ 24 n.3, 182 P.2d 372.

*Access to Government Meetings.* Although the Utah Legislature first enacted a rudimentary open meetings law in 1955, that law allowed

public officials to hold closed "executive sessions" as long as the officials took no official action during those sessions. Not surprisingly, this provision was used to exclude the public and the press from many government meetings.

Upon submission of Utah's current open meetings act to the Legislature in 1977 (after three earlier efforts to pass the bill had failed), one of the bill's sponsors noted that nearly every other state had enacted open meetings laws that were stronger than Utah's, and that in Utah many government meetings were conducted in secret or held in so-called "executive sessions."

Utah's Open and Public Meetings Act ("Open Meetings Act") is designed not only to protect the public's right to attend government meetings, but also to give the public adequate notice of when and where such meetings will be held. The need for adequate notice was illustrated dramatically during the 1977 legislative debates, when one representative explained that in his small town in rural Utah most of the citizens met at the Mormon meeting house on Sunday and discussed political matters. If the town citizens felt that an additional meeting was necessary, an announcement was made in church and the townspeople would reconvene at the schoolhouse after the church meeting. The legislator acknowledged that in recent years "outsiders" who "were not of the faith" had moved into his town, but he was reluctant to require his town officials to post notices of government meetings or to give notice of the meeting to a newspaper, because such notice had never been required before. The sentiments expressed by this particular legislator may have been atypical, but they illustrate why many observers felt that a better open meetings law was needed desperately in Utah.

The Open Meetings Act states that the "Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business," and that "[i]t is the intent of the Legislature that the state, its agencies, and its political subdivisions . . . take their actions openly[] and . . . conduct their deliberations openly." Utah Code Ann. § 52-4-102(1)-(2). The Open Meetings Act requires state and local government entities and their advisory bodies to give notice of their meetings and to conduct their meetings in public, subject to certain exceptions discussed below. *See id.* §§ 52-4-201, -202.

*Are Agencies Complying With Utah's Public Access Laws?* Since passage of Utah's open records and open meeting statutes, the media and various public interest groups have lobbied aggressively to protect the public's right of access to government meetings and government records. Although most government agencies favor openness in government and are willing to comply with the access statutes, there are some notable exceptions.

- In 2007, the television station *KSL-TV* requested mug shots of a man and a woman who had been booked into the San Juan County Jail and who were convicted subsequently of crimes against a minor. The station requested the photographs in connection with a news story. The county denied the station's request, arguing that the mug shots were private because public disclosure would constitute an invasion of the convicted individuals' privacy, and the station appealed to the district court. In May 2009, the district court issued an oral ruling from the bench that the mug shots constituted public records under GRAMA. *Bonneville Int'l Corp. d/b/a KSL-TV v. San Juan County Comm'r*, No. 070700046 (Utah 7th Dist.).

- In 2004, the *Deseret News* requested a copy of an independent investigative report concerning allegations that the Chief Deputy County Clerk had sexually harassed and retaliated against a subordinate employee and that county officials knew of the misconduct but refused to address it. The county denied the request and the newspaper appealed to the district court. The district court ruled in favor of the county, determining that release of the report would invade the alleged harasser's personal privacy rights and could interfere with future sexual harassment investigations. The newspaper appealed to the Utah Supreme Court, which reversed the district court's decision and

held that the investigative report was a public record under GRAMA. In a sharply worded opinion, the Utah Supreme Court observed that “GRAMA does not contemplate adversarial combat over record requests. It instead envisions an impartial, rational balancing of competing interests.” *Deseret News Publ’g Co. v. Salt Lake County*, 2008 UT 26, ¶ 25, 182 P.2d 372.

- In 1996, the Utah Senate held a secret meeting to discuss the politically controversial issue of gay student clubs in public schools. The Senate issued no public notice or agenda for the meeting, nor did the Senate take a vote to convene in closed session for any of the purposes authorized under the Open Meetings Act. In denying the Senate’s motion to dismiss the lawsuit challenging the secret meeting, the Utah Third District Court determined that the Senate’s action “ignores and overlooks the textual limits of the Utah Constitution, and the Open and Public Meetings Act on the issue of public meetings.” See Memorandum Decision, *Jolley v. Utah State Senate*, No. 960901127 (Utah 3d Dist. July 12, 1996). Pursuant to the parties’ stipulation, the court entered judgment against the Senate finding that “to the extent that the Senate is required to comply with Utah’s open and public meetings law . . . the Senate violated that law” by holding the secret meeting. See Judgment & Order, *Jolley v. Utah State Senate*, No. 960901127 (Utah 3d Dist. Feb. 19, 1997).

- In 1994, the Davis County Sheriff’s Office refused to release an audio tape of a 911 telephone call and Sheriff’s reports concerning a double murder-suicide. The 911 calls were placed by a woman as she was being shot by her estranged husband. The Sheriff’s Office refused to release the 911 tape on the ground that it was “too graphic” for public consumption. A local television station filed suit seeking access to the tape and police reports. After a sixteen-month legal battle, a district court judge ruled that the 911 tape and Sheriff’s reports were public records under Utah law and ordered the County to release them. The County agreed to pay more than \$27,000 in attorneys’ fees and costs incurred by the television station in filing the lawsuit. *Fox Television Stations Inc. v. Clary*, No. 940700284 (Utah 2d Dist. Feb. 23, 1996).

- In 1994, the City of Orem refused to release the names, resumes, and professional qualifications of the six finalists for the position of Orem City Manager. The City claimed public disclosure would invade the finalists’ privacy and deter qualified applicants from applying in the future. The local newspaper and other open government advocates argued that public disclosure of the finalists’ names and professional qualifications was critical for the public to make informed judgments about the search and selection process and the quality and diversity of the candidate pool. The newspaper filed a lawsuit seeking the finalists’ names and, following a two-year legal battle, a district

court judge ruled that the public interest favored release of the finalists’ names, resumes, and application records. *Scripps League Newspapers v. City of Orem*, No. 940400646 (Utah 4th Dist. Sept. 23, 1996).

A disturbing recent development has been the practice of state and local governments to use their information monopolies as revenue generators. Although GRAMA limits government copying charges to the “actual cost of providing” a record, some state and local government agencies have interpreted this language to include various overhead, labor, and other indirect costs. The result has been unreasonably high copying or “compilation” charges for some government records. For example, in *Graham v. Davis County Solid Waste Mgmt. & Energy Recovery Special Serv. Dist.*, 1999 UT App 136, ¶ 29, 979 P.2d 373, the Utah Court of Appeals held that the defendant had not violated GRAMA by charging \$280.00 in compilation fees where the defendant “had to take files, documents and data from several sources and organize them in order to respond to Mr. Graham’s request.” And, although GRAMA expressly states that “[e]very person has the right to inspect a public record free of charge,” Utah Code Ann. § 63G-2-201(1) (emphasis added), the State Records Committee has ruled that persons wishing to inspect public driving records must pay a fee of \$3 per record to the Utah Drivers License Division. The Records Committee reasoned that the fee was permissible under another state statute allowing a charge for “furnish[ing] a report on the driving record of any person.” See Decision & Order, *Deseret News Publ’g Co. v. Utah Dep’t of Public Safety*, No. 92-02 (Utah State Rec. Comm. Nov. 12, 1992). These and other access issues likely will continue to arise in Utah until resolved by legislative amendment or by judicial decision.

*Anticipated Changes in Utah’s Access Laws.* The provisions of the Utah access statutes as of March 2011 are summarized below. GRAMA is likely to undergo more legislative tinkering and some litigation as government, the news media, and members of the public continue to apply the statute and to explore its contours. Open government advocates likely will continue lobbying for enforcement and penalty provisions in the Open Meetings Act and for more clearly defined access under GRAMA to electronic records, including e-mail and electronic databases. Government interests likely will continue seeking expansion of exemptions to public access under GRAMA and the Open Meetings Act. In light of these continuing efforts to revise Utah’s access statutes, the reader should examine the Utah Code and determine whether the Legislature has enacted any subsequent amendments to Utah’s access laws before relying on the information contained in this outline.

Any questions concerning the statutory provisions or regulations governing state meetings or state records may be directed to the Utah Freedom of Information Hotline (1-800-574-4546), the Utah Headliners Chapter of the Society of Professional Journalists, the Utah Attorney General’s Office, or the Utah State Division of Archives.

# Open Records

## I. STATUTE -- BASIC APPLICATION

### A. Who can request records?

#### 1. Status of requestor.

In Utah, the Government Records Access and Management Act (“GRAMA”) governs access to public records. GRAMA states that “[e]very person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours . . . .” Utah Code Ann. § 63G-2-201(1).

Under GRAMA, “a record is public unless otherwise expressly provided by statute.” *Id.* § 63G-2-201(2).

GRAMA restricts access to all records that are classified as “private,” “controlled,” or “protected.” *Id.* § 63G-2-201(3)(a).

GRAMA also restricts access to all records “to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.” *Id.* § 63G-2-201(3)(b).

#### 2. Purpose of request.

Under GRAMA, a requester’s purpose is irrelevant to his or her right to inspect and receive copies of records.

#### 3. Use of records.

GRAMA imposes no restrictions on the public’s use of the information disclosed by the government; however, a court may “limit the requester’s use and further disclosure” to safeguard certain interests in the case of private, protected, or controlled records. Utah Code Ann. § 63G-2-404(8)(b).

### B. Whose records are and are not subject to the act?

GRAMA applies to all “governmental entities,” which include the following:

#### 1. Executive branch.

##### a. Records of the executives themselves.

Executive branch entities subject to GRAMA include: “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.” Utah Code Ann. § 63G-2-103(11)(a)(i). GRAMA also extends to any “office, agency, board, bureau, committee, department, advisory board, or commission” of the above-named entities if the office, agency, board, etc. “is funded or established by the government to carry out the public’s business.” *Id.* § 63G-2-103(11)(b).

##### b. Records of certain but not all functions.

GRAMA does not *exempt* any executive branch records from its scope, although it does *restrict access* to specific categories of records. For example, access is restricted to “records of the governor’s office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor’s contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public.” Utah Code Ann. § 63G-2-305(29).

#### 2. Legislative bodies.

Legislative bodies subject to GRAMA include “the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst,

Office of Legislative Research and General Counsel, the Legislature, and legislative committees.” Utah Code Ann. § 63G-2-103(11)(a)(ii). GRAMA also extends to any “office, agency, board, bureau, committee, department, advisory board, or commission” of the above-named entities if the office, agency, board, etc. “is funded or established by the government to carry out the public’s business.” *Id.* § 63G-2-103(11)(b). GRAMA does not apply to “any political party, group, caucus, or rules or sifting committee of the Legislature.” *Id.* § 63G-2-103(11)(a)(ii). However, the Legislature and its staff offices are not subject to GRAMA’s fees or appeals provisions. *See id.* § 63G-2-703(2)(a). In addition, all letters of inquiry submitted by any judge at the request of any judicial nominating committee shall be classified as private under GRAMA. *See id.* § 67-1-2.

#### 3. Courts.

GRAMA applies to the judicial branch of government, including the “courts, the Judicial Council, Office of the Court Administrator and similar administrative units in the judicial branch.” Utah Code Ann. § 63G-2-103(11)(a)(iii). However, the judiciary is not subject to GRAMA’s appeals provisions. *See id.* § 63G-2-702(2)(a). Judicial records also may be subject to other statutes, regulations, judicial rules, or court orders that are beyond the scope of this outline. *See, e.g.,* Utah Code Jud. Admin. R4-201 to R4-206.

#### 4. Nongovernmental bodies.

##### a. Bodies receiving public funds or benefits.

GRAMA does not apply expressly to nongovernment bodies receiving public funds or benefits. However, certain records created and maintained by private entities that enter into contracts with government entities may be available for public inspection under GRAMA. For example, the following records normally are public: “documentation of the compensation that a governmental entity pays to a contractor or private provider,” Utah Code Ann. § 63G-2-301(2)(j); “records documenting a contractor’s or private provider’s compliance with the terms of a contract with a governmental entity,” *id.* § 63G-2-301(3)(b); “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,” *id.* § 63G-2-301(3)(c); and “contracts entered into by a governmental entity.” *Id.* § 63G-2-301(3)(d).

##### b. Bodies whose members include governmental officials.

GRAMA does not apply expressly to nongovernment groups whose members include government officials.

#### 5. Multi-state or regional bodies.

It is unclear, based on Utah’s current statutory provisions, how these laws would apply to multistate or regional bodies (such as planning authorities).

#### 6. Advisory boards and commissions, quasi-governmental entities.

GRAMA applies to “every office, agency, board, bureau, committee, department, advisory board, or commission” of any executive, legislative, or judicial branch entity described above that is “funded or established by the government to carry out the public’s business.” Utah Code Ann. § 63G-2-103(11)(b).

In addition, the budget documents and financial statements of “public associations,” such as the Utah Association of Counties, are public records if fifty percent or more of the public association’s members are elected or appointed public officials from Utah and membership dues or other financial support come from public funds. *Id.* § 63G-2-901.

#### 7. Others.

GRAMA also applies to “any state-funded institution of higher education or public education,” Utah Code Ann. § 63G-2-103(11)(a)(iv), and to any political subdivision of the state that has not adopted its

own information access rules by policy or by ordinance. *See id.* § 63G-2-103(11)(a)(v). It should be noted, however, that those political subdivisions that *do* adopt information access policies or ordinances must ensure that such policies or ordinances comply with GRAMA's substantive classification and access provisions. *See id.* § 63G-2-701(1)(d).

### C. What records are and are not subject to the act?

#### 1. What kind of records are covered?

GRAMA states that “[e]very person has the right to inspect a public record free of charge . . .” Utah Code Ann. § 63G-2-201(1). “Public records” include all records that are not “private,” “controlled,” “protected,” or otherwise exempt from disclosure by statute. *See id.* § 63G-2-201(3). GRAMA states that certain records are public and must be disclosed, except to the extent that they contain information *expressly* exempted by court order or by statute. *Id.* § 63G-2-301(2). The list of public records, which is illustrative rather than exhaustive, *see id.* § 63G-2-301(4), includes:

- (a) laws;
- (b) names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of the government entity's former and present employees and officers excluding: (i) undercover law enforcement personnel, and (ii) investigative personnel if disclosure reasonably could be expected to impair the effectiveness of investigations or endanger any individual's safety;
- (c) final opinions that are made by a government entity in a judicial, administrative, or adjudicative proceeding, unless the proceeding was properly closed to the public or the opinion contains information which is controlled, private, or protected;
- (d) final interpretations of statutes or rules, unless otherwise protected;
- (e) information contained in the records of the open portion of the meetings of government entities, including the records of all votes of each member of the government entity;
- (f) judicial records, unless otherwise protected;
- (g) records held by government entities concerning real property titles, encumbrances, restrictions on use, or tax status;
- (h) Department of Commerce records concerning incorporation and uniform commercial code filings;
- (i) data on individuals, otherwise private, but the individual who is the subject of the record has given the government entity written permission to make the record available to the public;
- (j) records of compensation paid by a government entity to a “contractor” (a person who provides goods or services directly to the government entity or an entity funded by the government entity) or a “private provider” (a person who contracts with the government entity to provide services to the public);
- (k) summary data collected from records that are classified as private, controlled, or protected that do not disclose the classified information; and
- (l) voter registration records, including an individual's voting history, except for those parts of the record classified as private.

*See id.* § 63G-2-301(2).

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

- (a) administrative staff manuals, instructions to staff, and statements of policy;
- (b) records documenting a contractor's or private provider's compliance with the terms of a contract with a government entity;
- (c) records documenting the services provided by a contractor or private provider to the extent that the records would be public if prepared by the government entity;
- (d) contracts entered into by a government entity;
- (e) any account, voucher, or contract that deals with a government entity's receipt or expenditure of funds;
- (f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a government 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 government entity in which the government entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;
- (i) empirical data contained in drafts if (1) the empirical data is not reasonably available to the requester elsewhere in similar form, and (2) the government entity is given a reasonable opportunity to correct any errors or to make nonsubstantive changes before release;
- (j) drafts that are circulated to anyone other than: (1) a government entity; (2) a political subdivision; (3) a federal agency if the government entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved; (4) a government-managed corporation; or (5) a contractor or a private provider;
- (k) drafts that have never been finalized but were relied upon by the government entity in carrying out action or policy;
- (l) original data in a computer program if the government entity chooses not to disclose the program;
- (m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants before service;
- (n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants before trial;
- (o) records that would disclose information relating to formal charges or disciplinary actions against a past or present government entity employee if: (1) the disciplinary action has been completed and all time periods for administrative appeal have expired, and (2) the charges on which the disciplinary action was based were sustained;
- (p) records maintained by the Division of State Lands and Forestry or the Division of Oil, Gas and Mining that evidence mineral production on government lands;
- (q) final audit reports;
- (r) occupational and professional licenses;
- (s) business licenses; and
- (t) a notice of violation, a notice of agency action under section 63G-4-201, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a government entity, but not including records that initiate employee discipline.

*See id.* § 63G-2-301(3).

If a record was subject to a confidentiality agreement before GRAMA's effective date, the prior law and judicial interpretations are controlling, unless all parties to the agreement agree otherwise. *See id.* § 63G-2-105.

*What records are excluded:* “Records of a governmental entity or political subdivision regarding security measures designed for the protection of persons or property, public or private,” are not subject to GRAMA, including security plans, security codes, combinations or passwords, passes and keys, security procedures, and building and public works designs, to the extent the records or information relate to a public entity's ongoing security measures. *Id.* § 63G-2-106. Also, records controlled or maintained by any government entity subject to the Standards for Privacy of Individually Identifiable Health Information are not subject to GRAMA. *See id.* § 63G-2-107.

## 2. What physical form of records are covered?

“Record” includes “a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics . . . that is prepared, owned, received, or retained by a governmental entity or political subdivision.” Utah Code Ann. § 63G-2-103(22)(a). “Record” *does not* include: (i) a personal note or communication prepared or received by an employee or an officer of a government entity in the his or her personal capacity; (ii) temporary drafts prepared for the originator's personal use or for the personal use of the originator's supervisor; (iii) materials that are legally owned by an individual; (iv) copyrighted or patented material, where the patent or copyright is owned by someone other than the government; (v) proprietary software; (vi) junk mail; (vii) books or other materials contained in public libraries; (viii) daily calendars or personal notes; (ix) computer programs purchased or developed for the use of the government entity; (x) government employees' mobile telephone numbers, provided the employee has designated at least one public business telephone number; (xi) certain information provided by the Public Employee's Benefit and Insurance Program to a county; and (xii) notes or internal memoranda prepared as a part of the deliberative process by a member of the judiciary, by an administrative law judge, by a member of the Board of Pardons, or by a member of any other body charged by law with performing a quasi-judicial function. *See id.* § 63G-2-103(22)(b).

## 3. Are certain records available for inspection but not copying?

Some statutes provide that specific records are available for inspection but not for copying.

### D. Fee provisions or practices.

#### 1. Levels or limitations on fees.

GRAMA states that a government entity may charge a “reasonable fee” to cover the “actual cost of providing a record.” Utah Code Ann. § 63G-2-203(1). The government entity also may charge for certain costs incurred in compiling a record in a form other than that maintained by the government entity. *See id.* § 63G-2-203(2). Fees may be established by the Legislature, by political subdivisions, or by the Judicial Council. *See id.* § 63G-2-203(3). GRAMA's fee provisions do “not alter, repeal or reduce fees” established by other state statutes. *Id.* § 63G-2-203(9).

#### 2. Particular fee specifications or provisions.

##### a. Search.

A government entity may charge for the cost of staff time for search and retrieval of records *if* the request is for records compiled in a form other than that normally maintained by the government entity. Utah Code Ann. § 63G-2-203(2)(a)-(b). However, a government entity may *not* charge a fee for (i) reviewing a record to determine whether it is subject to disclosure, and (ii) inspecting a record. *See id.* § 63G-2-203(5). In *Graham v. Davis County Solid Waste Mgmt. & Energy Recovery Special Serv. Dist.*, 1999 UT App 136, 979 P.2d 363, the Utah Court of

Appeals held that “a governmental agency may assess compilation fees in conjunction with a request for records only if: (1) a request specifies that the documents be compiled in a form other than that used by the agency and the requester consents to the imposition of compilation fees; or (2) the request, without specifying that the records be compiled in a form other than that maintained by the agency, nonetheless requires the agency to extract materials from a larger document or source and it is not feasible or reasonable to allow the requester to compile the records.” *Id.* ¶ 28. If a requester appeals a compilation fee, the government entity bears the burden of proving that either of these two conditions applies. *See id.*

##### b. Duplication.

The fee that a government entity may charge for providing records is limited to the “actual cost,” and the fee must be “reasonable” and approved by the entity's executive officer. Utah Code Ann. § 63G-2-203(1). GRAMA further states that a government entity “may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of persons to inspect and receive copies of a record under this chapter.” *Id.* § 63G-2-201(11).

#### 3. Provisions for fee waivers.

Government entities are *encouraged* to grant fee waivers when release of the record “primarily benefits the public rather than a person” (news media requests are presumed to benefit the public); “the individual requesting the record is the subject of the record” or the subject's legal guardian; or the “requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.” Utah Code Ann. § 63G-2-203(4)(a).

#### 4. Requirements or prohibitions regarding advance payment.

“A governmental entity may require payment of past fees and future estimated fees before beginning to process a records request if the fees are expected to exceed \$50; or if the requester has not paid fees from previous requests.” Utah Code Ann. § 63G-2-203(8).

#### 5. Have agencies imposed prohibitive fees to discourage requesters?

Some state agencies and political subdivisions have interpreted GRAMA's authorization to collect the “actual cost of duplication” as a license to charge for various overhead, labor, and other indirect costs. This interpretation has resulted in imposition of unreasonably high copying charges for some records. And, although GRAMA states expressly that a government entity may *not* charge a fee for inspecting a record, the State Records Committee has ruled that persons wishing to *inspect* public driving records must pay a fee of \$3 per record to the Utah Drivers License Division. The Records Committee reasoned that the fee was permissible under another state statute allowing a charge for “furnish[ing] a report on the driving record of any person.” *See* Decision & Order, *Deseret News Publ'g Co. v. Utah Dep't of Pub. Safety*, No. 92-02 (Utah State Rec. Comm. Nov. 12, 1992). The Records Committee's cramped reading of GRAMA's free inspection provision has been criticized.

### E. Who enforces the act?

#### 1. Attorney General's role.

“The Office of the Attorney General shall provide counsel to the records committee and shall review proposed retention schedules.” Utah Code Ann. § 63G-2-502(8).

#### 2. Availability of an ombudsman.

GRAMA makes no allowance for an ombudsman.

#### 3. Commission or agency enforcement.

The State Records Committee consists of seven individuals, including (a) an individual in the private sector whose profession requires

him to create or manage records that if created by a governmental entity would be private or controlled; (b) the state auditor or the auditor's designee; (c) the director of the Division of History or the director's designee; (d) the governor or the governor's designee; (e) one citizen member; (f) one elected official representing political subdivisions; and (g) one individual representing the news media." Utah Code Ann. § 63G-2-501(1). The Records Committee's duties include meeting at least once every three months; reviewing and approving retention and disposal of records; hearing appeals from determinations of access as provided by GRAMA; and appointing a chairperson from among its members. *See id.* § 63G-2-502(1). The Records Committee also may "make rules to govern its own proceedings as provided by . . . the Utah Administrative Rule Making Act," and "by order, after notice and hearing, reassign classification and designation for any record series by a governmental entity if the governmental entity's classification or designation is inconsistent with [GRAMA]." *Id.* § 63G-2-502(2).

#### F. Are there sanctions for noncompliance?

A district court may enjoin any government entity or political subdivision that violates or proposes to violate GRAMA. *See* Utah Code Ann. § 63-2-802(1). A district court also may "assess against any governmental entity or political subdivision reasonable attorney fees and other litigation costs reasonably incurred in connection with a judicial appeal of a denial of a records request if the requestor substantially prevails." *Id.* § 63G-2-802(2). However, any claims for attorneys' fees or for damages are subject to the Governmental Immunity Act. *See id.* § 63G-2-802(5). Criminal penalties also exist for certain GRAMA violations. *See id.* § 63G-2-801. "A public employee or other person who has lawful access to any private, controlled, or protected record," and "who intentionally discloses, provides a copy of, or improperly uses" such record, with the knowledge that disclosure or use is prohibited, "is guilty of a class B misdemeanor." *See id.* § 63G-2-801(1)(a). "A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any private, controlled or protected record to which they are not legally entitled is guilty of class B misdemeanor." *Id.* § 63G-2-801(2)(a).

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open records statute.

#### 1. Character of exemptions.

Under GRAMA, all "public records" are available for inspection. Utah Code Ann. § 63G-2-201(1). In addition to the list of records expressly made public by GRAMA, all other government records are presumed to be public unless classified as "private," "controlled," or "protected," or unless access to such records is restricted by court rule or by state or federal statute. *Id.* § 63G-2-201(2)-(3).

*How records are classified.* Each government entity evaluates and designates each record series (a collection of individual records, grouped for designation purposes) according to GRAMA's provisions. The designation is reported to the state archives. *See id.* § 63-2-307(1).

- i. The government entity is not required to classify a specific record until access to the particular record is requested. *See id.* § 63G-2-307(2).
- ii. A government entity may reclassify a record at any time. *See id.* § 63G-2-307(3).
- iii. Any person who submits a record to a government entity that contains a trade secret or commercial or nonindividual financial information that the person believes should be protected from disclosure, shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality. *See id.* § 63G-2-309(1)(a)(i)(A)-(B).
- iv. Records classified as "private," "controlled," or "protected" must satisfy the statutory requirements for each classification.

#### a. General or specific?

GRAMA's exemptions to public access are specific. *See* Utah Code Ann. § 63G-2-201(2)-(3).

#### b. Mandatory or discretionary?

Government entities cannot publicly disclose records that are classified as private, controlled, or protected, except as set forth expressly in Utah Code sections 63G-2-201(5)(b)-(c), -202, -206, or -303. If access to a record is restricted by court rule or by state or federal statute, the specific provisions of those rules or statutes govern disclosure. *Id.* § 63G-2-201(6)(a).

#### c. Patterned after federal Freedom of Information Act?

Not addressed.

### 2. Discussion of each exemption.

*Private records.* The following records are private and therefore exempt from public disclosure under GRAMA:

- a. "records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels";
- b. records containing an individual's medical history;
- c. records of publicly funded libraries used to identify a patron;
- d. records received or generated in a Senate or House ethics committee concerning any alleged violation of the rules on legislative ethics if the ethics committee meeting was closed to the public;
- e. records of a Senate confirmation committee "concerning character, professional competence, or physical or mental health of an individual if: (i) prior to the meeting, the chair of the committee determines release of the records" will interfere with the committee's investigation or could deprive the individual of a fair hearing and (ii) "after the meeting, if the meeting was closed to the public";
- f. records concerning a current or former employee of, or applicant for employment with, a government entity "that would disclose that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions";
- g. that part of a record indicating a person's Social Security number; and
- h. 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.

Utah Code Ann. § 63G-2-302(1).

The following records are private if properly classified as such by a government 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";
- b. "records describing an individual's finances, except those that are expressly classified as public";
- c. "records of independent state agencies if the disclosure of those records would conflict with fiduciary obligations of the agency";
- d. other records containing information on an individual, the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;
- e. records provided by the United States government or a government entity outside the state, that are provided with the require-

ment that the records be classified as private; and

f. medical records unless the records are in the possession of the University of Utah Hospital and 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.”

*Id.* § 63G-2-302(2)-(3).

A government entity shall disclose a private record to the following individuals: (a) the subject of the record; (b) the parent or legal guardian of an unemancipated minor who is the subject of the record; (c) the legal guardian of a legally incapacitated person who is the subject of the record; (d) an individual who “has a power of attorney from the subject of the record”; (e) an individual who submits a notarized release from the subject of the record; (f) a health care provider if the record is a medical record and releasing the record is consistent with normal professional practice and medical ethics; and (g) “any individual to whom the record must be provided pursuant to court order or legislative subpoena.” *Id.* § 63G-2-202(1).

A government entity may, in its discretion, disclose records that are classified properly as private to persons other than those specified above if the head of the government entity, or a designee, determines that the interests favoring access to the record outweigh the interests favoring restriction of access. *See id.* § 63G-2-201(5)(b).

If more than one subject is included in the private record, the record shall be segregated. *See id.* § 63G-2-202(3).

*Private Information on Certain Government Employees.* At-risk government employees, meaning former or current (i) peace officers, (ii) federal, state, and military judges, (iii) United States Attorneys and Assistant United States Attorneys, (iv) armed forces and military prosecutors, and (v) law enforcement personnel, may request that a government entity holding a record or 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 classify such records as private. *See Utah Code Ann.* § 63G-2-303(2).

*Controlled records.* The following records are controlled and therefore exempt from public disclosure under GRAMA if:

a. “the record contains medical, psychiatric, or psychological data about an individual” (unless the record is in the possession of the University of Utah Hospital and is 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”).

b. the government entity reasonably believes that releasing the information would (i) be “detrimental to the subject’s mental health or safety,” or (ii) the information constitutes “a violation of normal professional practice and medical ethics”; and

c. the government entity has properly classified the record.

Utah Code Ann. §§ 63G-2-302(3), -304.

A government entity shall disclose a controlled record to the following individuals: (a) a physician, a psychologist, a certified social worker, an insurance provider or agent, or a government public health agency that submits a notarized release and a signed acknowledgment from the subject of the record; and (b) any person to whom the record must be disclosed pursuant to a court order. *See id.* § 63G-2-202(2).

If more than one subject is included in the controlled record, the record shall be segregated. *See id.* § 63-2-202(3).

*Protected records.* The following records are protected if classified properly by the government entity:

a. trade secrets;

b. commercial information or nonindividual financial information if: (i) disclosure of the information could result in an unfair competitive injury to the person submitting the information or would impair the government from obtaining necessary future information; (ii) the person submitting the information has a greater interest in prohibiting access than the public does in obtaining access; and (iii) the person submitting the information has been properly approved for a business confidentiality claim;

c. commercial or financial information to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned government transaction or cause financial injury to the state economy;

d. “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”;

e. “test questions and answers to be used in future license, certification, registration, employment or academic examinations”;

f. records the disclosure of which would give an unfair advantage to a person proposing to enter into a contract with the government, although a person can see the contract bids after the bidding has been closed;

g. records that would identify real property or the appraised value of personal or real property under consideration for public acquisition, unless: (i) the public’s interest in the information outweighs the government’s interest in acquiring the property on the best possible terms; (ii) the information has already been disclosed to those not required to keep the information confidential; (iii) potential sellers of the property already have learned of the government’s plans to acquire the property; (iv) the potential seller of the property already has learned of the government’s estimated value of the property; or (v) if the property in consideration is a single family residence, the government entity seeking to acquire the property has initiated negotiations to acquire the property as required by law;

h. records prepared in contemplation of sale, exchange, lease, rental, or other compensated real or personal property transaction that, if disclosed, would reveal the estimated or appraised value of the property, unless: (i) the public’s interest in the information outweighs the government’s interest in acquiring the property on the best possible terms; or (ii) the information already has been disclosed to those not required to keep the information confidential;

i. “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: (i) reasonably could be expected to interfere with the investigations; (ii) reasonably could be expected to interfere with the audit, disciplinary, or enforcement proceedings; (iii) would create a danger of depriving a person of a right to a fair trial or an impartial hearing; (iv) reasonably could be expected to disclose a confidential source’s identity; or (v) reasonably could be expected to disclose audit or investigative techniques, procedures, policies, or orders not generally known outside the government entity if disclosure would interfere with enforcement or audit efforts;

j. “records the disclosure of which would jeopardize the life or safety of an individual”;

k. records the disclosure of which would jeopardize the security of government property, programs, or recordkeeping systems;

- l. records the disclosure of which would jeopardize the security or safety of a correctional facility or that would interfere with the control and supervision of the offender;
- m. records the disclosure of which would reveal recommendations made to the Board of Pardons and Parole by its employees or related entities;
- n. records of the State Tax Commission the disclosure of which would interfere with the audits and collections performed by the State Tax Commission;
- o. “records of a governmental audit agency relating to an ongoing or planned audit” before release of the final audit;
- p. “records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery”;
- q. “records disclosing an attorney’s work product”;
- r. records disclosing privileged communications between the government entity and its attorney;
- s. a legislator’s personal files, unless they include notice of legislative action or policy;
- t. records in the custody or control of the Office of Legislative Research and General Counsel that, if disclosed, would reveal a legislator’s contemplated course of action before the legislator’s final decision;
- u. research requests from a legislator to the Office of Legislative Research and General Counsel or to the Office of the Legislative Fiscal Analyst and the responses to such requests;
- v. “drafts, unless otherwise classified as public”;
- w. “records concerning a governmental entity’s strategy about collective bargaining or pending litigation”;
- x. “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”;
- y. records, other than personnel evaluations, that contain a personal recommendation if disclosure would constitute a clearly unwarranted invasion of personal privacy or is not in the public interest;
- z. records that reveal the location of historic, prehistoric, paleontological, or biological resources that, if known, would jeopardize the security of those resources;
- aa. records of independent state agencies if their disclosure would violate a fiduciary duty;
- bb. records of a public institution of higher education regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions that could be discussed properly in a legally closed meeting; however, final decision on these matters may not be classified as protected;
- cc. records of the governor’s office that would reveal the governor’s contemplated policies or actions before the governor has implemented or rejected those policies or courses of action or made them public;
- dd. “records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas”;
- ee. records provided by the United States government or by another state that are given to the government entity with the requirement that they be maintained as protected;
- ff. “transcripts, minutes or reports of the closed portion of a meeting,” except as otherwise provided by law;
- gg. records that reveal the contents of settlement negotiations, except for final settlements or empirical data to the extent that such settlements or data are not otherwise exempt from disclosure;
- hh. staff memoranda used in the decision-making function of any quasi-judicial body;
- ii. “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 shall not restrict access to a record evidencing a final contract”;
- jj. materials to which access must be limited for purposes of securing or maintaining the government entity’s proprietary protection of intellectual property rights;
- kk. the name or other information that may reveal the identity of a donor or potential donor to a government entity, provided that: (i) the donor requests anonymity in writing; (ii) terms or conditions relating to the donation may not be classified as protected; and (iii) except for public institutions of higher education, the government unit to which the donation is made is engaged primarily in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of his immediate family, or any entity owned or controlled by the donor or his immediate family;
- ll. accident reports, except as provided by law;
- mm. notification of workers’ compensation insurance coverage as described by law;
- nn. the following records of a public institution of education that have been developed, discovered, or received by or on behalf of faculty, staff, employees, or students of the institution: unpublished lecture notes, unpublished research notes and data, unpublished manuscripts, creative works in process, scholarly correspondence, and confidential information contained in research proposals;
- pp. “records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public” (although a submitted request for a legislative audit “is a public document” unless the legislator asks that the records revealing the name “be maintained as public records until the audit is completed and made public”);
- qq. records, including maps, that detail the location of an explosive;
- rr. information contained in the Division of Aging and Adult Services database or information received or maintained relating to the Identity Theft Reporting Information System;
- ss. “information contained in the Management Information System and Licensing Information System”;
- tt. information pertaining to the National Guard’s operations or activities;
- uu. records that a pawn or secondhand business provides to law enforcement or to the central database;
- vv. “information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food” and Department of Agriculture records relating to the

National Animal Identification System or relating to livestock diseases;

ww. records related to emergency plans prepared or maintained by the Division of Homeland Security if disclosure of the records would endanger public safety or the security of government property, government programs, or a private person's property if that person provides information to the Division;

xx. unsubstantiated or anonymous complaints held by the Department of Health regarding child care programs;

yy. unless otherwise classified as public under the law, an individual's personal contact information if the individual is required to produce such information by law or by government order and the individual has a reasonable expectation that such information will be kept confidential;

zz. the personal and business contact information of an individual who performs or is involved in medical or scientific research involving animals if that research is conducted within the state system of higher education;

aaa. unless otherwise made public, initial proposals under the Government Procurement Private Proposal Program;

bbb. unless otherwise made public under the law, information collected and prepared by the Judicial Performance Evaluation Commission concerning a judge;

ccc. proposals submitted by and contracts entered into by the Utah Educational Savings Trust Plan, as well as records of the trust, if the disclosure of the records conflicts with fiduciary obligations;

ddd. records of the Public Land Policy Coordinating Office in furtherance of certain agreements; and

eee. information requested by and provided to the Utah State 911 Committee.

Utah Code Ann. § 6G3-2-305.

A government entity shall disclose a protected record to the following: (a) the person who submitted the record; (b) any individual who has a power of attorney from all persons, government entities, and political subdivisions whose interests were sought to be protected by the protected classification; (c) any individual who submits a notarized release from all persons, government entities, and political subdivisions, or their legal representatives, whose interests were sought to be protected by the protected classification; or (d) any person to whom the record must be disclosed pursuant to a court order or legislative subpoena. *See id.* § 63G-2-202(4).

A government entity may, in its discretion, disclose records that are protected to persons other than those specified above if the head of the government entity, or a designee, determines that the interests favoring access to the record outweigh the interests favoring restriction of access. *See id.* § 63G-2-201(5)(b).

## B. Other statutory exclusions.

GRAMA states that records may be exempt from disclosure if access is otherwise restricted by statute, by federal regulation, or by court rule. *See Utah Code Ann.* § 63G-2-201(3)(b). Examples of records to which access is restricted include the following:

### 1. Health and human service records.

a. Records concerning an individual's eligibility for certain welfare benefits are private. *See id.* § 63G-2-302(1)(a).

b. Health Department records may be provided to such authorized persons as local health departments, the Divisions of Substance Abuse and Mental Health, the Utah Medical Association, peer review committees, etc., but otherwise

are not subject to GRAMA. *See id.* § 26-25-1(2).

c. Communicable disease information relating to an individual is confidential and may be released only in accordance with enumerated requirements. *See id.* § 26-6-27.

d. Health Care Facility License Department information is available to the public, except that information shall not be disclosed if disclosure would constitute an unwarranted invasion of privacy or if it identifies any individual other than the owner or operator of a health care facility. *See id.* § 26-21-9(2). Information received by the department from a health care facility pertaining to the facility's accreditation by a voluntary accrediting organization shall be private. *See id.* § 26-21-9(3).

e. Child abuse reports are not subject to GRAMA but may be available to authorized persons. *See id.* § 62A-4a-412(1).

f. Inquiries made regarding missing persons are confidential and are only available to law enforcement agencies, agencies responsible for the child, the courts, the office of the public prosecutor, a person engaged in bona fide research when approved by the director of the division, or other authorized persons. *See id.* § 53-10-204.

g. The Department of Health may not disclose any identifiable health data unless the individual, his next of kin if deceased, his parent or guardian, or a person holding a power of attorney on his behalf has consented to the disclosure, or unless the disclosure is to a state or government entity or to an individual or organization for certain confidential research or statistical purposes, or to a government entity for the purpose of conducting an audit or evaluation. *See id.* § 26-3-7; *see also id.* § 26-3-10 (requiring that the Department of Health protect the security of its identifiable health data).

h. The Utah Health Advisory Council shall observe confidential requirements placed on the Department of Health in the use of provided information. *See id.* § 26-1-7.5(7).

i. An individual who desires to examine a payment for services offered by the Division of Family Services shall sign a statement using a form prescribed by the division and shall indicate that the individual is a taxpayer and a resident, and that the individual will not use the information for commercial or political purposes. In addition, the Division of Family Services "shall establish policies and rules to govern the custody and disclosure of confidential information, as well as to provide access to information regarding payments for services offered by the division." The statute does not prohibit the Division of Family Services and its agencies from "making special studies or from issuing or publishing statistical material and reports of a general character." The Division also may release information to local, state, and federal agencies. The statute states that access to the Division of Family Services records shall be governed by GRAMA. *Id.* § 62A-4a-112.

j. A pharmacist may not release any information contained in a prescription or patient's medication profile to anyone except federal or state drug enforcement officers and their agencies, the patient himself, the patient's legal representatives, a third-party payment program, a pharmacist or physician providing professional services to the patient, or a pharmacy patient's attorney upon written authorization. *See id.* § 58-17b-604(2).

k. A mental health therapist may not disclose any confidential communications with a patient without the express consent of the patient, of the patient's parent or legal guardian, or of the patient's authorized representative. *See id.* § 58-60-114(1). A therapist may disclose confidential commu-

nications if permitted or required to do so under a state or federal law, rule, regulation, or order, under an exemption from evidentiary privilege, or under a generally recognized professional or ethical standard. *See id.* § 58-60-114(2).

l. Information obtained, or complaints reviewed by, an ombudsman under the Long-term Care Ombudsman Program shall be kept confidential unless the complainant or elderly resident, or a legal representative of either, consents in writing to the disclosure; a court orders the disclosure; or the disclosure is made to an authorized agency. *See id.* § 62A-3-207. Unauthorized disclosure of any confidential information submitted pursuant to the Long-term Care Ombudsman Program is a Class B misdemeanor. *See id.* § 62A-3-208.

m. In any proceeding to commit involuntarily a mentally retarded individual to a mental retardation facility, the court may exclude from the hearing all persons not necessary to conduct the proceeding, but the individual's attorney shall have access to all documented information gathered on the individual at the time of and prior to the hearing. *See id.* § 62A-5-312(11), (12).

n. A physician or a surgeon cannot, without the patient's consent, be examined in a civil action as to information acquired by the doctor while attending a patient and that was necessary to enable the doctor to prescribe or act for the patient. *See id.* § 78B-1-137(4); *see also* Utah R. Evid. 506.

o. A patient or a patient's personal representative may inspect or receive a copy of the patient's records from a health care provider when the health care provider is governed by the Standards for Privacy of Individually Identifiable Health Information. (When the health care provider is not governed by Standards for Privacy of Individually Identifiable Health Information, "a patient or a patient's personal representative may inspect or receive a copy of the patient's records unless access to the records is restricted by law or judicial order.") *See* Utah Code Ann. § 78B-5-618.

p. A person who discloses or uses personally identifiable information obtained from state sources concerning individuals applying for vocational rehabilitation services is guilty of a misdemeanor, unless the individual consents to such disclosure. *See id.* § 53A-24-107.

## 2. Health insurance records.

a. Auditors performing state-ordered insurance audits of an organization shall have access to patients' medical records, but such information shall remain confidential. *See* Utah Code Ann. § 31A-8-404.

b. Medical records of enrollees of an organization and annual audits are to be kept confidential, unless otherwise ordered by a court. *See id.* § 31A-8-405.

c. Health insurance enrollees' medical records are confidential. *See id.* § 31A-22-617(4)(c).

d. Third Party Administrators' records, which include trade secrets or the identity of policyholders, are confidential, except that the insurance commissioner may use such information in any proceeding against the administrator. *See id.* § 31A-25-302(3).

e. All records pertaining to a hearing under the Delinquency Administrative Action Provisions are confidential, with some exceptions. *See id.* §§ 31A-27-503, -504.

## 3. State and local miscellaneous records.

a. Alternative Dispute Resolution records are confidential. *See* Utah Code Ann. § 78B-6-208(5).

b. A will deposited by a testator with the county clerk for safekeeping shall be kept confidential. The conservator may examine such a will under procedures ensuring the will's confidentiality. *See id.* § 75-2-901.

c. Every appointed or elected officer or municipal employee who is also an officer, director, agent, employee, or owner of a substantial interest in any business entity that is subject to the regulation of the municipality must disclose the position held by the officer and the nature and value of his interest upon first becoming appointed, elected, or employed, and at any time thereafter if his position in the business entity changes significantly or if the value of his interest increases significantly. The municipality's mayor shall report the substance of all such disclosure statements to the members of the municipality's governing body or may provide to the members of the governing body copies of the disclosure statements within 30 days after the mayor receives the statement. *See id.* § 10-3-1306.

d. A public officer may not be examined as a witness about communications made to him or her in official confidence when the public interests would suffer by the disclosure. *See id.* § 78B-1-137.

e. No elected or appointed county officer shall disclose confidential information acquired by reason of his or her official position. *See id.* § 17-16a-4(1)(a).

f. The governor shall deliver a "confidential draft copy" of his proposed budget recommendations to the Office of the Legislative Fiscal Analyst. *Id.* § 63J-1-201(1).

g. "The governing body of each municipality shall keep a journal of its proceedings. The books, records, accounts and documents of each municipality . . . shall be available to the public during regular business hours for inspection and copying." *Id.* § 10-3-603.

h. The governing body of each city having 65,000 or more inhabitants must provide the results of an annual examination of the city's finances to the city newspapers and to any person upon request. *See id.* § 10-3-604; *see also id.* § 10-2-301 (describing the classifications of municipalities based on population numbers of inhabitants).

i. Unless otherwise classified as a private record, "all instruments of record and all indexes [in the county recorder's office] are open to public inspection during office hours." *Id.* § 17-21-19(1). "Upon payment of the applicable fee, a person may obtain copies of a public record." *Id.*

j. Maps of boundary surveys in the county surveyor's office are public records. *See id.* § 17-23-17(2)(c).

## 4. Taxation and revenue records.

a. State tax returns are to be kept confidential, except by court order or in other official proceedings. For all taxes except individual income tax and corporate franchise tax, the commission may, by rule, provide the identity and other information of taxpayers who failed to file tax returns or to pay the tax due. *See* Utah Code Ann. § 59-1-403.

b. Under the Multistate Tax Compact, information obtained in an audit is to be kept confidential and available only to party states, their subdivisions, or the United States. *See id.* § 59-1-801(Art. VIII, sec. 6).

c. Property tax audit reports are confidential, although the statistical information based on the audits may be public. *See id.* § 59-2-705(1).

d. Sales and Use tax returns and other information are confidential under Utah Code section 59-1-403. *See id.* § 59-

12-109.

e. The records of ownership, registration, transfer, and exchange of most Revenue Bonds, and of persons to whom payment is made with respect to such obligations, generally are classified as private or protected under GRAMA. *See id.* § 63B-1b-402(8)(b).

5. *Records of other governmental agencies.*

a. All records of the Utah Horse Racing Commission are subject to GRAMA. *See Utah Code Ann.* § 4-38-6.

b. Financial reports filed with the lieutenant governor pursuant to the Lobbyist Disclosure and Regulation Act are public. *See id.* § 36-11-106(2).

c. Records of the Division of Motor Vehicles that identify nonconforming vehicles are public. *See id.* § 41-1a-522(2).

d. Abstracts of judgment received by the Driver License Division for violations of motor vehicle laws shall be classified and disclosed by the division pursuant to Utah Code section 53-3-109. *See id.* § 77-7-25.

e. Notices of a juvenile court's decision regarding a minor charged with a violent felony may be provided to a district superintendent or to the school or transferee school "for purposes of the minor's supervision and student safety." *Id.* § 78A-6-113.

f. Records provided by any pawnbroker or pawnshop to a law enforcement agency in accordance with Utah law are classified as protected under GRAMA. *See id.* § 63G-2-305(46).

**C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.**

1. *Access to Addresses of Licensed Dog Owners.* In *Mr. Pooper Scooper Inc. v. Murray City and Sandy City*, No. 02-06 (Utah State Rec. Comm. May 13, 2002), the State Records Committee ruled that disclosure of the home addresses of persons who were licensed dog owners would constitute an unwarranted invasion of personal privacy. Although other government entities had classified the addresses of licensed dog owners as public, the Records Committee upheld each city's denial of access based on Utah Code section 63-2-302(2)(d) (renumbered as section 63G-2-302), which allows a government entity to classify records as private if disclosure would constitute a "clearly unwarranted invasion of personal privacy." *See Decision & Order, Mr. Pooper Scooper Inc. v. Murray City & Sandy City*, No. 02-06 (Utah State Rec. Comm. May 13, 2002).

2. *Access to State Computerized Traffic Accident Database.* In *The Salt Lake Tribune v. Utah Dep't of Transp.*, No. 92-01 (Utah State Rec. Comm. Oct. 9, 1992), the State Records Committee ruled that the computerized traffic accident database created and maintained by the Utah Department of Transportation ("UDOT") was a public record and that *The Salt Lake Tribune* was entitled to a copy of the database on 9-track computer tape. The Records Committee also ruled, however, that certain personal information in the database had to be redacted before release of the database. On appeal, the Third District Court ruled that the entire traffic accident database was a public record and ordered UDOT to provide the entire unredacted database to *The Salt Lake Tribune*. *Utah Dep't of Transp. v. Kearns-Tribune Corp.*, No. 920906153AA (Utah 3d Dist. Nov. 29, 1993).

3. *Inspection of Driver's License Records.* In *Deseret News Publ'g Co. v. Utah Dep't of Public Safety*, No. 92-02 (Utah State Rec. Comm. Nov. 12, 1992), the State Records Committee ruled that persons wishing to inspect public driver's license records must pay a fee of \$3 per record despite GRAMA's express language barring fees for

inspection of public records. The Records Committee reasoned that the fee was permissible under another state statute allowing a charge for "furnish[ing] a report on the driving record of any person." *See Decision & Order, Deseret News Publ'g Co. v. Utah Dep't of Pub. Safety*, No. 92-02 (Utah State Rec. Comm. Nov. 12, 1992).

4. *Records of Delinquent Child Support Payments.* In *Jones v. U.S. Child Support Recovery*, 961 F. Supp. 1518, 1520 (D. Utah 1997), defendants sent a poster to plaintiff's employer and family members that referred to plaintiff "as a 'Dead Beat Parent' with a 'well-paying job' whose 'own flesh and blood' 'wishes his mother cared about him to send the child support which the court ordered her to contribute to his care.'" The federal district court rejected defendants' public record defense to plaintiff's invasion of privacy claim, holding that Utah Code section 63-2-302(2)(b) (renumbered as section 63G-2-302), which classifies "records describing an individual's finances" as private, prohibits the disclosure of records of delinquent child support payments to the general public. *Id.* at 1522.

5. The following cases were decided under Utah's old open records statutes; namely, the Public and Private Writings Act, Utah Code Ann. § 78-26-1 to -3 (repealed 1992), and the Information Practices Act, Utah Code Ann. § 63-2-59 to -91 (repealed 1991). Consequently, these cases are now limited by GRAMA. However, the rules set forth in *KUTV Inc. v. Utah State Bd. of Educ.*, 689 P.2d 1357 (Utah 1984), regarding the presumption of openness and official promises of confidentiality retain vitality and have been codified substantially by GRAMA.

a. *No absolute right of access.* In *Redding v. Jacobsen*, 638 P.2d 503 (Utah 1981), the Utah Supreme Court upheld the constitutionality of a Utah statute stating that salary data about state college professors is confidential. The court reasoned that even if there were a constitutional right of access (which the court doubted), "the public has no absolute constitutional right to immediate access to everything its government officials are doing or everything their records contain." *Id.* at 507.

b. *Presumption of Openness.* In *KUTV Inc. v. Utah State Bd. of Educ.*, 689 P.2d 1357 (Utah 1984), a television station sought to obtain "confidential" questionnaires in which students and teachers answered questions about sex discrimination and religious discrimination at a public high school. The Utah Supreme Court ordered the Board of Education to edit the questionnaires to delete personally identifying data, and then to release the edited questionnaires. The court noted, however, that the public's "right to know" is not absolute; it is subject to an "implied rule of reason." *Id.* at 1361. There is a presumption that government records are open to inspection, and an agency that seeks to keep a record secret bears the burden to justify its decision. *See id.* at 1361-62.

c. *Promises of Confidentiality.* In *KUTV Inc. v. Utah State Bd. of Educ.*, 689 P.2d 1357 (Utah 1984), the Utah Supreme Court held that a state agency's promise of confidentiality is insufficient, by itself, to preclude disclosure of a public record. "The promise [of confidentiality] would have to coincide with reasonable justification based on public policy for refusing to release the records." *Id.* at 1361.

**D. Are segregable portions of records containing exempt material available?**

Under GRAMA, if a requested record contains both information the requester is entitled to inspect and information the requester is not entitled to inspect, a government entity "may deny access to information in the record if the information is exempt from disclosure to the requestor." Utah Code Ann. § 63G-2-308(2). This segregation provision is a codification of the rule established in *KUTV Inc. v. Utah State Bd. of Educ.*, 689 P.2d 1357, 1362 (Utah 1984), where the Utah

Supreme Court held that a state agency had a duty to segregate public from nonpublic information in a requested record.

### E. Homeland Security Measures.

In its 2002 General Session, the Utah Legislature passed House Bill 283, which enacted and amended GRAMA's provisions. The amendments responded to the terrorist attacks of September 11, 2001, on the World Trade Center in New York City and the Pentagon in Washington, D.C. amid growing concerns regarding the inability of existing law to deal with terrorist-type crimes. GRAMA now excludes from its coverage records of a government entity or political subdivision regarding security measures designed for the protection of persons or property, public or private, including security plans, security codes and combinations, passes and keys, security procedures, and building and public works designs, to the extent that the records relate to a public entity's ongoing security measures. *See* Utah Code Ann. § 63G-2-106. In addition, information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food is excluded from GRAMA's scope. *See id.* § 63G-2-305(47).

## III. STATE LAW ON ELECTRONIC RECORDS

### A. Can the requester choose a format for receiving records?

"In response to a request, a governmental entity is not required to . . . provide a record in a particular format, medium, or program not currently maintained by the governmental entity." Utah Code Ann. § 63G-2-201(8)(a)(iii). "Upon request, a governmental entity may provide a record in a particular form . . . if: (i) the governmental entity determines that it is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and (ii) the requestor agrees to pay the governmental entity for providing the record in the requested form in accordance with Section 63G-2-203." *Id.* § 63G-2-201(8)(b).

### B. Can the requester obtain a customized search of computer databases to fit particular needs?

Although GRAMA does not specifically address this issue, it is likely that a requester could obtain a customized search of computer databases as long as the requester identifies the records sought with reasonable specificity and pays for the search costs. *See* Utah Code Ann. § 63G-2-201(7).

### C. Does the existence of information in electronic format affect its openness?

Under GRAMA, "[a] governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of persons to inspect and receive copies of a record." Utah Code Ann. § 63G-2-201(11). Original data in a computer program is normally public. *See id.* § 63G-2-301(3)(l).

### D. How is e-mail treated?

#### 1. Does e-mail constitute a record?

GRAMA defines a "Record" to include "electronic data," "documents," and "other documentary material regardless of physical form or characteristics." Utah Code Ann. § 63G-2-103(22)(a).

#### 2. Public matter on government e-mail or government hardware

Given that GRAMA defines a "Record" to include "electronic data . . . regardless of physical form or characteristics," communications regarding a public matter on government e-mail or government hardware are presumably public unless otherwise specifically exempted. Utah Code Ann. § 63G-2-103(22)(a).

#### 3. Private matter on government e-mail or government hardware

Under GRAMA, a "Record" does not include "personal communication[s] prepared or received by an employee or officer of

a governmental entity in the employee's or officer's private capacity." Utah Code Ann. § 63G-2-103(22)(b)(i). The meaning of "private capacity," and whether it extends to communications regarding a private matter on government e-mail or government hardware, is not addressed.

#### 4. Public matter on private e-mail

GRAMA's definition of a "Record" excludes "personal communication[s] prepared or received by an employee or officer of a governmental entity in the employee's or officer's private capacity." Utah Code Ann. § 63G-2-103(22)(b)(i). The meaning of "private capacity," and whether it extends to communications regarding a public matter on private e-mail, is not addressed.

#### 5. Private matter on private e-mail

GRAMA defines a "Record" to exclude "personal communication[s] prepared or received by an employee or officer of a governmental entity in the employee's or officer's private capacity." Utah Code Ann. § 63G-2-103(22)(b)(i).

### E. How are text messages and instant messages treated?

#### 1. Do text messages and/or instant messages constitute a record?

GRAMA defines a "Record" to include "electronic data," "documents," and "other documentary material regardless of physical form or characteristics." Utah Code Ann. § 63G-2-103(22)(a).

#### 2. Public matter message on government hardware.

Given that GRAMA defines a "Record" to include "electronic data . . . regardless of physical form or characteristics," text messages or instant messages regarding a public matter on government hardware are presumably public unless otherwise specifically exempted. Utah Code Ann. § 63G-2-103(22)(a).

#### 3. Private matter message on government hardware.

Under GRAMA, a "Record" does not include "personal communication[s] prepared or received by an employee or officer of a governmental entity in the employee's or officer's private capacity." Utah Code Ann. § 63G-2-103(22)(b)(i). The meaning of "private capacity," and whether it extends to text messages or instant messages regarding a private matter on government hardware, is not addressed.

#### 4. Public matter message on private hardware.

GRAMA's definition of a "Record" excludes "personal communication[s] prepared or received by an employee or officer of a governmental entity in the employee's or officer's private capacity." Utah Code Ann. § 63G-2-103(22)(b)(i). The meaning of "private capacity," and whether it extends to text messages or instant messages regarding a public matter on private hardware, is not addressed.

#### 5. Private matter message on private hardware.

GRAMA defines a "Record" to exclude "personal communication[s] prepared or received by an employee or officer of a governmental entity in the employee's or officer's private capacity." Utah Code Ann. § 63G-2-103(22)(b)(i).

### F. How are social media postings and messages treated?

GRAMA defines a "Record" to include "electronic data," "documents," and "other documentary material regardless of physical form or characteristics." Utah Code Ann. § 63G-2-103(22)(a).

### G. How are online discussion board posts treated?

GRAMA defines a "Record" to include "electronic data," "documents," and "other documentary material regardless of physical form or characteristics." Utah Code Ann. § 63G-2-103(22)(a).

## H. Computer software

### 1. Is software public?

Proprietary software and computer programs are not subject to GRAMA. Utah Code Ann. § 63G-2-103(2)(b)(v), (x).

### 2. Is software and/or file metadata public?

Although GRAMA does not address this topic, given that proprietary software and computer programs are not subject to GRAMA, Utah Code Ann. § 63G-2-103(2)(b)(v), (x), software and file metadata likely are exempt from disclosure as well.

## I. How are fees for electronic records assessed?

When the record is “the result of computer output, other than word processing,” fees may include “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,” as well as staff and administrative costs. Utah Code Ann. § 63G-2-203(2)(a)-(c).

## J. Money-making schemes.

### 1. Revenues.

Some government entities, such as the Driver License Division, the Tax Commission, and the Department of Natural Resources, sell information in their databases to private companies to generate revenue.

### 2. Geographic Information Systems.

The Automated Geographic Reference Center provides geographic information system services to the federal government, local political subdivisions, and private persons. Utah Code Ann. § 63F-1-506(1)-(2). The Center may establish rules, policies, and fees for its services. *Id.* § 63F-1-506(4)(a)-(b).

## K. On-line dissemination.

The availability of online transmission of records varies between government entities. The requester should inquire with the government entity that maintains the record to determine if online dissemination is available. In 2005, GRAMA was amended to allow a government entity to provide access to an electronic record in lieu of providing access to its paper equivalent. Utah Code Ann. § 63G-2-201(12).

## IV. RECORD CATEGORIES -- OPEN OR CLOSED

The following list is not exhaustive, but it identifies several Utah statutory provisions, including those outside of GRAMA, which govern access to particular record categories. To determine whether a particular record is open to inspection, requesters should consult the Division of State Archives and the agency that actually maintains the record. In addition, the State General Retention Schedule, available from the Division of State Archives, contains a summary of the classifications assigned to common records.

### A. Autopsy reports.

Copies of all autopsy reports, findings, and records gathered or compiled in the investigation of a death may be obtained by the decedent's next-of-kin, legal representative, or physicians who attended the decedent during the year before death upon written request for release of such documents by the medical examiner. In addition, the county attorney, the district attorney, the attorney general, or other law enforcement officials having jurisdiction may, upon written request, secure copies of the original records where necessary for the performance of their duties. Otherwise, the medical examiner shall maintain the confidentiality of the records. *See* Utah Code Ann. § 26-4-17.

### B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

#### 1. Rules for active investigations.

Administrative enforcement records are protected, and therefore not subject to disclosure under GRAMA, if their release:

- a. reasonably could be anticipated to interfere with enforcement investigations;
- b. reasonably could be anticipated to interfere with enforcement proceedings;
- c. would endanger a person's right to an 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 . . . techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement . . . efforts.

Utah Code Ann. 63G-2-305(9).

#### 2. Rules for closed investigations.

GRAMA does not distinguish between active and closed administrative enforcement investigations.

## C. Bank records.

1. The Department of Financial Institutions's orders, reports, and other information are confidential, are not public records, and are not open to the public. *See* Utah Code Ann. § 7-1-802(2). Exceptions to this rule are set forth in the statute. *See id.* § 7-1-802(3).
2. All notices, records, and other information regarding possession of an institution by the Commissioner of the Department of Financial Institutions may be kept confidential, and all court records relating to the commissioner's possession *may* be sealed from the public under certain enumerated circumstances. *See id.* § 7-2-6(1)(b).
3. Every stockholder, member, or borrower of an association may inspect the non-confidential books and records of the association. *See id.* § 7-7-12(1).
4. Every shareholder of a bank has the right to inspect a bank's books and records. *See id.* § 7-3-39. A shareholder may be allowed access to “records pertaining solely to the deposits, borrowings, or other financial transactions of a particular customer” under certain enumerated conditions. *Id.*
5. Communications and writings which relate to trust business conducted by banks, savings and loan companies, and other trust companies shall be kept “inviolable.” *Id.* § 7-5-6.
6. Upon application by any person, the Department of Financial Institutions may exercise its regulatory powers. The information furnished by the applicant and the findings of the Department's investigations are open to the public, except those portions designated as confidential to prevent “a clearly unwarranted invasion of privacy.” *Id.* § 7-1-706(3)(b).
7. Meetings of the Board of Financial Institutions and records of its proceedings are open to the public, except for discussions of confidential information pertaining to a particular financial institution. *See id.* § 7-1-203(5)(e).
8. Except for a select group of government entities, “an individual acting on behalf of a government entity may not request, obtain by subpoena, or otherwise obtain information from a state or federally chartered financial institution that constitutes a record reflecting the financial condition of any person without first obtaining: (a) written permission from all account holders of the account referenced in the record to be examined; or (b) an order from a court of competent jurisdiction permitting access to the record.” *Id.* § 7-1-2001(2).

## D. Budgets.

Budget recommendations of the governor's office are not public if their disclosure "would reveal the governor's contemplated policies or courses of action before the governor has implemented or rejected those policies or courses of action or made them public." Utah Code Ann. § 63G-2-305(29). Also confidential are "records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas." *Id.* § 63G-2-305(30). Budget documents and financial statements of "public associations," however, are public records if fifty percent or more of the public association's members are elected or appointed public officials from Utah and membership dues or other financial support come from public funds. *Id.* § 63G-2-901.

## E. Business records, financial data, trade secrets.

1. Department of Commerce records concerning "incorporations, mergers, name changes, and uniform commercial code filings" are generally public. Utah Code Ann. § 63G-2-301(2)(h).

2. If properly classified by the government, commercial or nonindividual financial information is protected if disclosure of such information could reasonably result in unfair competitive injury to the person or entity submitting the information or would result in the government's impaired ability to obtain necessary information in the future; "the person submitting the information has a greater interest in prohibiting access than the public in obtaining access"; and the person submitting the information has provided the government with certain requisite information. *Id.* § 63G-2-305(2).

3. Trade secrets are generally protected. *See id.* § 63G-2-305(1). In *DataLister Inc. v. Utah Labor Comm'n*, No. 00-01 (Utah State Rec. Comm. Jan. 14, 2000), the State Records Committee determined that records regarding employers' insurance coverage are protected as trade secrets under Utah Code sections 63-2-304(1) (renumbered as section 63G-2-305), 13-24-2(4), and 63-2-308(1) (renumbered as section 63G-2-309).

4. Materials to which access must be limited to secure or maintain the government entity's *proprietary* interest in patents, copyrights, and trade secrets are classified as protected. Utah Code Ann. § 63G-2-305(36).

5. Civil antitrust investigations by the attorney general will be kept confidential unless waived; such information, however, may be disclosed to a grand jury and to officers of federal and state law enforcement agencies. *See id.* § 76-10-917(8).

6. The identity of a person being investigated under the Consumer Sales Practices Act may not be disclosed publicly unless the person's name has become a matter of public record or he or she has consented. *See id.* § 13-11-7(2). Final judgments rendered under the Act are public records. *See id.* § 13-11-7(1).

7. Credit reports and financial statements submitted by a person wanting to be licensed in the construction trades are confidential, and are therefore not subject to GRAMA. *See id.* § 58-55-307.

8. Shareholders of business corporations have the right to examine the corporation's books and records at a reasonable time for a proper purpose. *See id.* § 16-10a-1602.

9. A director or a member of a nonprofit corporation is entitled to inspect and copy certain records of the corporation including its articles and bylaws, resolutions adopted by the board of directors, minutes of all members' meetings for a period of three years, records of all action taken by members without a meeting for a period of three years, a list of the names and addresses of the nonprofit's members and directors, financial statements for the preceding three years, and a copy of the nonprofit's most recent annual report. *See id.* §§ 16-6a-1601, -1602.

10. The Department of Financial Institutions may not disclose the names or identities of persons or the facts it investigates under the Utah Consumer Credit Code. *See id.* § 70C-8-103(5). This restriction does *not* apply to disclosures made during an enforcement proceeding. *See id.* § 70C-8-103(6).

11. Unless waived by the entity, books and records of an agricultural cooperative association may be inspected only by a member or by a member's agent or attorney. *See id.* § 3-1-43(1). The information contained in the records may not be disclosed to third parties without the association's prior consent. *See id.* § 3-1-43.

12. All registrations and bonds filed with the Division of Corporations and Commercial Code by collection agencies are open to public inspection. *See id.* § 12-1-5.

13. Records relating to the ownership of security interests in registered public obligations are not subject to public inspection or copying. *See id.* § 15-7-11(1).

14. The Securities Division's register of all applications for registration and registration statements is open for public inspection. *See id.* § 61-1-25(2).

15. Records of all trademarks or service marks registered with the Division of Corporations and Commercial Code are open for public examination. *See id.* § 70-3a-202.

## F. Contracts, proposals and bids.

1. Documentation of compensation that a government entity pays to a contractor or private provider is generally public. *See Utah Code Ann.* § 63G-2-301(2)(j).

2. Contracts entered into by a government entity are "normally public." *Id.* § 63G-2-301(3)(d).

## G. Collective bargaining records.

Records concerning a government entity's strategy about collective bargaining are classified generally as protected. *See Utah Code Ann.* § 63G-2-305(23).

## H. Coroners reports.

1. Medical examiner records are confidential and may be released to such authorized persons as the county attorney, the attorney general, the decedent's next of kin, a legal representative, physicians, etc. *See Utah Code Ann.* § 26-4-17.

2. Medical examiners' reports are admissible as evidence at civil trials. *See id.* § 26-4-18. To the extent that a report is used at trial, that report is generally open to the public.

## I. Economic development records.

GRAMA exempts from disclosure "records that would reveal negotiations regarding assistance or incentives offered by or requested from a government 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 government entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract." Utah Code Ann. § 63G-2-305(35).

## J. Election records.

### 1. Voter registration records.

Voter registration records, including a person's voting history, are public except for those parts "identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number." Utah Code Ann. §§ 63G-2-301(l), -302(i).

### 2. Voting results.

a. After paper ballots have been read and tallied, the judges "shall . . . string the counted, excess, and spoiled ballots on separate strings,"

Utah Code Ann. § 20A-4-106(1)(a)(i), and “shall carefully seal all of the strung ballots in a strong envelope.” *Id.* § 20A-4-106(1)(b). The strung ballots may not be examined by anyone, except during an authorized recount. *Id.* § 20A-4-106(1)(a)(ii).

b. The official register, pollbook, tally sheets, etc. shall be sealed in a “strong envelope or pouch” before the judges adjourn. *Id.* § 20A-4-106(1), (4). All challenges to an individual’s right to cast a ballot must be recorded in the official register and on the challenge sheets in the pollbook. *Id.* § 20A-3-202(4).

c. The election officer shall preserve ballots and all other official election returns for 22 months, after which time if no election contest is commenced, he must “destroy them without opening or examining them.” *Id.* § 20A-4-202(2).

d. “The board of canvassers shall canvass the election returns by publicly opening the returns and determining from them the votes of each voting precinct for: (i) each person voted for; and (ii) for and against each ballot proposition voted upon at the election.” *Id.* § 20A-4-303(1).

e. In the case of a contested election, where an inspection of the ballots is necessary for the determination of the election contest, the judge may require the election officials to deliver the unopened ballots to the court, where the “judge shall open and inspect the ballots in open court in the presence of the parties or their attorneys, and immediately after such inspection shall seal them in an envelope and return them . . . to their legal custodian.” *Id.* § 20A-4-404(3).

f. Campaign finance statements filed by candidates for municipal office must be made available for public inspection and copying no later than one business day after the statement is filed. *Id.* § 10-3-208.

#### K. Gun permits.

When a concealed weapons permit is issued, a record shall be maintained by the office of the licensing authority, but the names, addresses, telephone numbers, dates of birth, and Social Security numbers of persons receiving such permits are classified as protected records under GRAMA. Utah Code Ann. § 53-5-708(1).

#### L. Hospital reports.

1. All certificates, applications, records, and reports that directly or indirectly identify a patient or former patient at Utah State Hospital and other mental institutions shall be kept confidential and may be disclosed only if: (a) the individual identified or his legal guardian, if any, or, if a minor, his parent or legal guardian shall consent”; (b) disclosure is necessary to comply with other laws, including completion of information forms by a court clerk to be supplied to the Bureau of Criminal Identification; or (c) a court directs “upon its determination that disclosure is necessary for the conduct of the proceedings before it, and that failure to make the disclosure would be contrary to public interest.” Utah Code Ann. § 62A-15-643(1).

2. Records containing medical, psychiatric, or psychological data about an individual are generally controlled if properly classified as such. *See id.* § 63G-2-304(1).

3. Records containing an individual’s medical history, diagnosis, condition, treatment, etc. are classified as private. *See id.* § 63G-2-302(1)(b).

In *Carter v. Univ. of Utah*, No. 95-02 (Utah State Rec. Comm. April 21, 1995), the State Records Committee ordered the University of Utah Hospital to release private patient records to a hemodialysis nurse who was terminated from her position with the hospital. The nurse, who had commenced a grievance proceeding against the hospital for wrongful termination, sought access to portions of the records that related to her conduct as an employee. The Records Committee determined that, even though the records were classified properly as private, the interest in disclosure outweighed the interest favoring restriction of access and ordered the hospital to release the records with

information on individual patients redacted.

4. Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records 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.” Utah Code Ann. § 63G-2-302(3)(b).

5. Physicians’ abortion reports submitted to the Department of Health are “confidential and privileged.” *Id.* §§ 26-25-4, 76-7-313.

#### M. Personnel records.

##### 1. Salary.

Records containing the gross compensation of a government entity’s former and present employees and officers are public, 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.” Utah Code Ann. § 63G-2-301(2)(b).

##### 2. Disciplinary records.

Records relating to formal charges or disciplinary actions against a past or present government employee are generally public if the disciplinary action has been completed and the charges have been sustained. Utah Code Ann. § 63G-2-301(2)(o); *see also Atkinson v. City of West Jordan*, No. 99-13 (Utah State Rec. Comm. Nov. 15, 1999) (determining that an investigative report “regarding allegations of impropriety brought against Mr. Atkinson by a co-employee” was public). Judicial disciplinary records are closed to the public until the Utah Supreme Court has entered its final order, except: (a) “upon order of the [Utah] Supreme Court”; (b) “upon the request of the judge who is the subject of the complaint”; (c) upon the request of the Senate Judicial Confirmation Committee for the purpose of evaluating a candidate’s fitness for office; (d) “to aid in a criminal investigation or prosecution”; or (e) upon the request of the Office of Legislative Auditor General, with certain exceptions. Utah Code Ann. § 78A-11-112(3).

##### 3. Applications.

a. “[E]mployment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual’s home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions” are private. Utah Code Ann. § 63G-2-302(1)(f).

b. In 1994, *The Daily Herald* filed a lawsuit against Orem City for refusing to release the names, resumes, and professional qualifications of the four finalists for the position of Orem City manager. On September 23, 1996, a Fourth District judge ruled that “the records for which disclosure was sought, though private, are records as to which there is a greater public interest in disclosure than Orem’s interest in protecting them from disclosure.” *Scripps League Newspapers v. City of Orem*, No. 940400646 CN, at 17 (Utah 4th Dist. Sept. 23, 1996).

##### 4. Personally identifying information.

a. The names, business addresses, business telephone numbers, gross compensation, job description, gender, etc. of former and present government entity employees are generally public. Utah Code Ann. § 63G-2-301(2)(b).

b. “[E]mployment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual’s home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions” are private. *Id.* § 63G-2-302(1)(f).

c. “[T]hat part of a record indicating a person’s Social Security number or federal employer identification number” is private. *Id.* § 63G-2-302(1)(h).

d. “[T]hat 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.” *Id.* § 63G-2-302(1)(h).

e. Also exempt from disclosure are (1) “an individual’s home address, home telephone number, or personal mobile phone number, if: (a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and (b) the subject of the record has a reasonable expectation that this information will be kept confidential due to: (i) the nature of the law, ordinance, rule, or order; and (ii) the individual complying with the law, ordinance, rule, or order”; and (2) “the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is: (a) conducted within the state system of higher education . . . ; and (b) conducted using animals.” *Id.* § 63G-2-305(51), (52).

## 5. Expense reports.

Not addressed.

## 6. Other.

a. Employment records that contain performance evaluations and personal status information are private if properly classified by the government entity. Utah Code Ann. § 63G-2-302(2)(a).

b. Records other than performance evaluations containing personal recommendations are private if so classified by the government entity and if disclosure would constitute a clearly unwarranted invasion of personal privacy. *Id.* § 63G-2-302(2)(d).

c. Rules regarding the confidentiality of records pertaining to drug tests are subject to GRAMA. *Id.* § 67-18-5.

d. Data within pension records concerning service credits is confidential. *Id.* § 49-11-618(2).

e. All information, reports, and test results received by an employer through a drug or alcohol testing program are confidential, and may not be disclosed except in authorized disciplinary or rehabilitative proceedings, or in an authorized action by the employee for libel or slander. *Id.* § 34-38-13.

f. “Employing units” are required to keep certain records prescribed by the Department of Workforce Services and to allow the Division of Employment Development to inspect those records. The information contained in the records “may not be published or open to public inspection in any manner revealing the employing unit’s or the individual’s identity, but the information shall be disclosed to a party to an unemployment hearing before an administrative law judge of the department or a review by the Workforce Appeals Board to the extent necessary for the proper presentation of the party’s case.” *Id.* §§ 35A-4-312(3), (4)(a).

h. A grand jury report concerning a public officer’s or employee’s noncriminal misconduct shall be sealed by the managing judge and not be filed as a public record until at least 31 days after a copy of the order is served on the public officer or employee and an answer has been filed, or until the time for filing an answer has expired, an appeal has been taken, or the officer’s or employee’s rights of review have expired. *Id.* § 77-10a-17(3). The managing judge shall order the report sealed if filing the report as a public record may prejudice fair consideration of a pending criminal matter. *Id.* § 77-10a-17(6).

## N. Police records.

### 1. Accident reports.

a. Automobile and watercraft accident reports prepared by operators of vehicles involved in an accident, by witnesses to an accident, or by police officers investigating an accident, may be disclosed to the following: (1) a person involved in the accident or that person’s agent, parent, or legal guardian; (2) a person suffering loss in the accident or that person’s agent, parent, or legal guardian; (3) a member of the press or broadcast news media; (4) government agencies that will use

the record for official government, investigative, or accident prevention purposes; (5) law enforcement personnel; and (6) licensed private investigators. Utah Code Ann. §§ 41-6-40(3)(a), 73-18-13(3). Information provided to a member of the press or broadcast news media, however, may include only the name, age, sex, and city of residence of each person involved in the accident, the make and model year of each vehicle involved in the accident, whether each person involved in the accident had insurance coverage, the location of the accident, and a description of the accident. *Id.* § 41-6-403(d).

b. Motor Vehicle Division records are public, unless the division determines that the record is protected based upon a written request by the record’s subject. *Id.* § 41-1a-116. Certified copies of records of the Department of Motor Vehicles, other than those declared by law to be confidential for the department’s use, are available upon request and payment of search and copying fees. *Id.*

c. Information provided to the Drivers License Division of the Department of Public Safety relating to the physical, mental, or emotional impairment of “impaired” motor vehicle operators is confidential under GRAMA. *Id.* § 53-3-304(4).

### 2. Police blotter.

Law enforcement agencies’ chronological logs and initial contact reports are generally public records. Utah Code Ann. § 63G-2-301(3)(g).

a. In *Utah Dep’t of Pub. Safety v. State Records Comm.*, No. 100904439, at 3 (Utah 3d Dist. June 17, 2010), the court upheld the State Record Committee’s determination that the dash camera video and the DUI report form pertaining to former Utah Senator Sheldon Killpack’s traffic stop and arrest were initial contact reports under GRAMA and therefore public. In doing so, the court stated that GRAMA’s definition of “initial contact report” includes written as well as recorded records, and that a DUI report form is “prepared immediately following the incident and while the information is fresh in the reporting officer’s experience.” *Id.*

b. In *Weibel v. Logan City*, No. 94-06 (Utah State Rec. Comm. May 9, 1994), the State Records Committee held that the portion of police reports pertaining to persons against whom Logan City contemplated no further action was public, but that the portion pertaining to persons against whom criminal action was contemplated or pending was protected.

c. In *Fox Television Stations v. Clary*, No. 940700284 (Utah 2d Dist. Dec. 5, 1995), the court held that Sheriff Department reports containing information on sexual abuse of minor children were public records. Because the county had released another report that identified the victims and the person making the initial sexual abuse report, the court determined that the county was estopped from asserting confidential protection for the requested reports. In addition, the redaction of the victims’ names and other identifying information adequately protected any privacy interests.

### 3. 911 tapes.

In *Fox Television Stations v. Clary*, No. 940700284 (Utah 2d Dist. Dec. 5, 1995), the court also held that two tape recordings of 911 telephone calls placed by a woman as she was being shot by her estranged husband were public records and ordered the Sheriff’s Department to release complete, unredacted copies of the 911 tapes. The court concluded that the interests favoring restriction of access, if any, did not clearly outweigh the interests favoring access. Since no other statutory or constitutional exemptions applied, the 911 tapes were presumed public.

### 4. Investigatory records.

#### a. Rules for active investigations.

Access to investigatory records may be restricted if release of such records (1) reasonably could be expected to interfere with the investi-

gation; (2) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings; (3) would create a danger of depriving a person of a right to a fair trial or impartial hearing; (4) reasonably could be expected to disclose a confidential source's identity; or (5) reasonably could be expected to disclose confidential investigative or audit techniques. Utah Code Ann. § 63G-2-2-304(9). In *The Salt Lake Tribune & Matthew D. LaPlante v. Salt Lake City Police Dep't*, No. 04-16 (Utah State Rec. Comm. Nov. 23, 2004), the State Records Committee held that the initial reports from a missing person case involving Lori Kay Hacking were protected because information in the documents identified individuals not generally known to the public who could reasonably aid in the investigation. The Records Committee also determined that disclosure of the information sought could interfere with the investigation or influence a potential trier of fact, thus creating a danger of depriving the defendant of his right to a fair and impartial hearing.

#### b. Rules for closed investigations.

GRAMA does not draw a distinction between active and closed investigations.

### 5. Arrest records.

a. Arrest warrants after issuance are public records, although a court may restrict access to the warrant before service. Utah Code Ann. § 63G-2-301(3)(m).

b. Search warrants after execution are public records, although a court may restrict access before trial. *Id.* § 63G-2-301(3)(n).

### 6. Compilations of criminal histories.

a. Criminal history records and warrant arrest information are available to criminal justice agencies and to some noncriminal justice agencies and individuals for specific purposes. Other agencies are entitled to the information either by specific agreement or by authorization of the commissioner. The information "may only be used for the purpose for which it was provided and may not be further disseminated." Utah Code Ann. § 53-10-108.

b. Access to presentence investigation reports is restricted by statute. *Id.* § 77-18-1(5).

### 7. Victims.

a. Victims' names are presumed public, although access may be restricted if release would constitute a clearly unwarranted invasion of personal privacy. *See* Utah Code Ann. §§ 63G-2-103(14)(a)(ii), -302(2)(d).

b. Information given to a sexual assault counselor by a victim and reports prepared by the counselor are confidential and may be disclosed only to authorized persons or as required by law to report child abuse or neglect. *Id.* § 77-38-204.

### 8. Confessions.

There appears to be no Utah statute governing access to confessions, although law enforcement agencies may withhold confessions if release would interfere with an ongoing investigation. *See* Utah Code Ann. § 63G-2-304(9)(a).

### 9. Confidential informants.

Records that reasonably could be expected to disclose a confidential police informant's identity are protected from public disclosure. Utah Code Ann. § 63G-2-304(9)(d).

### 10. Police techniques.

Records that reasonably could be expected to disclose investigative techniques that are not generally known outside of government are protected from public disclosure. Utah Code Ann. § 63G-2-304(9)(e).

### 11. Mug shots.

A jail booking photograph is a record under GRAMA. *See KSL-TV v. Juab County Sheriff's Office*, No. 98-01 (Utah State Rec. Comm. Feb.

20, 1998). Because such records are not specifically exempted under GRAMA, they are presumed public. *See id.*

### 12. Sex offender records.

Information regarding sex offender registration is generally public. *See* Utah Code Ann. § 77-27-21.5. However, GRAMA classifies such information as private to the extent that the information is both required by the registration provisions of Utah Code section 77-27-21.5 and expressly exempted from public disclosure under Utah Code section 77-27-21.5(27). *Id.* § 63G-2-302(1)(m)(i)-(ii).

### 13. Emergency medical services records.

GRAMA classifies as private "records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data." Utah Code Ann. § 63G-2-302(1)(b).

#### O. Prison, parole and probation reports.

1. Expunged and sealed criminal records may not be divulged except under court order, with some exceptions. Utah Code Ann. § 77-18-15.

2. Information regarding sex offender registration is public except as otherwise stated in Utah Code section 77-27-21.5(27). *See id.* § 63G-2-302(1)(m).

3. "[M]emoranda prepared by staff and used in the decision-making process by . . . a member of the Board of Pardons and Parole" is classified as protected. *Id.* § 63G-2-304(34).

4. A magistrate judge issuing a search warrant may impose conditions on the warrant as necessary to afford protection against "the loss or disclosure of protected confidential sources of information." *Id.* § 77-23-203(2)(b).

5. Utah Code section 76-8-4 states that the record of a line-up procedure shall be available to the suspect. No mention is made of disclosure to the public.

6. Utah Code section 76-8-806 prohibits disclosure of any evidence concerning violations of the sabotage prevention statute until a formal complaint has been filed with the court.

7. Records of grand jury proceedings shall be kept "under seal." *Id.* § 77-10a-13(8).

8. Upon request, the victim of any offense committed by a minor "shall have the right to inspect and duplicate juvenile court legal records that have not been expunged concerning: (i) the scheduling of any court hearings on the petition; (ii) any findings made by the court; and (iii) any sentence or decree imposed by the court." *Id.* § 78A-6-114(1)(e).

9. Juvenile court records are open to inspection by parents or guardians, other parties in the case, the attorneys, agencies to which custody of the child has been transferred, and the Division of Criminal Investigations and Technical Services. With the judge's consent, the records may be inspected by the minor, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies. If a juvenile 14 years of age or older is charged with an offense that would be a felony if committed by an adult, the court shall make the petition, any adjudication or disposition orders, and the juvenile's delinquency history summary available upon request. Probation officers' records and reports of social and clinical studies are not open to inspection, except by consent of the judge under the rules of the Board of Juvenile Court Judges. *Id.* § 78A-6-209.

10. In abuse, neglect, and dependency cases, the court shall admit any person to a hearing, unless the court makes a finding upon the record that the person's presence at the hearing would: (i) be detrimental to the best interest of a child who is a party to the proceeding; (ii) impair the fact-finding process; or (iii) be otherwise contrary to the interests of justice. *Id.* § 78A-6-114(1)(a)(i). In delinquency cases where the minor charged is 13 years of age or younger, the court shall

admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present. *Id.* § 78A-6-114(1)(b). In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court for good cause if: (i) the minor has been charged with an offense which would be a felony if committed by an adult; or (ii) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult, and the minor has been previously charged with an offense which would be a misdemeanor of felony if committed by an adult. *Id.* § 78A-6-114(1)(c).

#### **P. Public utility records.**

1. Records of well logs, etc. are generally public, unless the well owner or operator requests confidentiality in writing. Such confidentiality, however, cannot exceed five years. *See* Utah Code Ann. § 73-22-6(1)(c).

2. Information provided to a geological survey, by any source, is to remain at the level of confidentiality assigned by the source. *See id.* § 79-3-202(2)(c).

3. Information obtained for state energy reports is confidential if the information provider so designates. *See id.* § 63K-2-202(1).

4. The Board of Oil, Gas and Mining shall not disclose data obtained from mining companies, except in some specified circumstances. *See id.* § 40-8-8(2).

5. Information provided in the notice of intent by a mining operator relating to a mineral deposit shall, with limited exceptions, be kept confidential, if the operator designates the information as such. *See id.* § 40-8-13(3).

6. Information on permit applications pertaining to analysis of chemical and physical properties of coal is to be kept confidential, with limited exceptions. *See id.* § 40-10-10(4).

7. Information submitted to the Division by a coal mine operator in a notice of intention to explore for coal, and designated as “confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights” of the coal company, shall not be available for public inspection. *Id.* § 40-10-8(2).

8. Oil well logs marked “confidential” shall be kept confidential for one year after the date on which the log is required to be filed with the Board, unless the well operator consents to earlier disclosure. *Id.* § 40-6-5(2)(b).

9. Information supplied to the Board about coal seams, test bearings, core sampling, or soil samples shall be made available to any person with an interest which is or may be adversely affected; but information that pertains only to the analysis of the chemical and physical properties of the coal (excepting information about hazards to the environment) shall be kept confidential and shall not be made a matter of public record. *See id.* § 40-10-10(4).

10. Copies of coal mining and reclamation inspection records and reports “shall be made immediately available to the public.” *Id.* § 40-10-19(6).

11. State Engineer’s records, maps, or papers shall be open to the public during business hours. *See id.* § 73-2-11.

12. Records, reports, or information obtained by the Water Quality Board from a waste disposal permit holder are public, unless otherwise provided by GRAMA. *See id.* § 19-5-113(1)(b).

13. Records of all hearings before the Public Service Commission are public, but information furnished to the PSC by a public utility may be withheld from the public “whenever and during such time as the [PSC] may determine that it is for the best interests of the public to withhold such information.” *Id.* § 54-3-21(4).

14. The Public Service Commission has the right to inspect a public utility’s accounts, books, papers, and documents. Persons other than a

PSC official may inspect such records only if the PSC authorizes them to do so. *See id.* § 54-7-7.

#### **Q. Real estate appraisals, negotiations.**

##### **1. Appraisals.**

Records that identify the appraisal or estimated value of real property under consideration for public acquisition generally are classified as protected, with certain specified exceptions. Utah Code Ann. § 63G-2-305(7).

##### **2. Negotiations.**

“[R]ecords prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real . . . property . . . which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property” are classified as protected, with certain specified exceptions. *Id.* § 63G-2-305(8).

##### **3. Transactions.**

“[R]ecords prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real . . . property . . . which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property” are classified as protected, with certain specified exceptions. *Id.* § 63G-2-305(8).

##### **4. Deeds, liens, foreclosures, title history.**

Not addressed.

##### **5. Zoning records.**

Not addressed.

#### **R. School and university records.**

##### **1. Athletic records.**

In *The Herald Journal v. Utah State Univ.*, No. 95-06 (Utah State Rec. Comm. July 30, 1995), Utah State University provided *The Herald Journal* with information regarding the gross compensation of the University’s athletic coaches but refused to release copies of the written contracts between the University and its head football and basketball coaches. Because the records were contracts entered into by a government entity and involved government expenditure of funds, the State Records Committee held that the contracts were public, and the University promptly released the contracts.

##### **2. Trustee records.**

Trustee records are subject to GRAMA. *See* Utah Code Ann. § 63G-2-103(11)(a)(iv).

##### **3. Student records.**

a. Records regarding student admission applications are protected, but final admissions decisions are not. Utah Code Ann. § 63G-2-305(28).

b. The following records “which have been developed, discovered, or received by or on behalf of . . . students of the institution” are protected: unpublished lecture and research notes, unpublished manuscripts, creative works in progress, scholarly correspondence, and confidential information contained in research proposal. *Id.* § 63G-2-305(40).

##### **4. Other.**

a. Test questions and answers used in academic examinations are classified as protected. *See* Utah Code Ann. § 63G-2-305(5).

b. Records of public institutions of higher education regarding tenure, admissions, appointments, promotions, etc. are protected if discussed in a legally closed meeting. Records reflecting the final decisions of those meetings, however, are not protected. *See id.* § 63G-2-305(28).

c. A public institution of higher education may classify records relating to a technology transfer or sponsored research as restricted under certain circumstances. *See id.* § 53B-16-302.

d. The identity of persons reporting suspected substance abuse activity on school grounds shall be kept confidential. *See id.* § 53A-11-1302(4).

e. Notices provided to school superintendents (pursuant to Utah Code section 78A-6-113) of juvenile court decisions made at detention hearings for minors taken into custody for a violent felony are classified as protected.

### S. Vital statistics.

“Vital records” (birth, death, abortion, marriage, divorce, annulments, adoptions) may be disclosed only where the Bureau of Vital Statistics determines that the applicant has a “direct, tangible, and legitimate interest” in the record, because: (a) the request is from the subject, a member of the subject’s immediate family, the subject’s guardian, or a designated legal representative; (b) a personal or property right of the person whose record is on file is involved; (c) the request is for official purposes of a state, local, or federal government agency; (d) the request is for a statistical or medical research program and prior consent has been obtained from the state registrar; or (e) the request is a certified copy of a court order, specifying the record to be examined. *See Utah Code Ann.* § 26-2-22(2). In addition, a vital record that is not a birth or death certificate will be available to the public if 75 years or more have passed since the date of the event on which the record is based. *See id.* § 26-2-22(4)(c).

#### 1. Birth certificates.

Birth records may be disclosed only where the Bureau of Vital Statistics determines that the applicant has a “direct, tangible, and legitimate interest” in the record. Utah Code Ann. § 26-2-22. Subject to certain exceptions, “a birth record, excluding confidential information collected for medical and health use” also will be made available to the public “if 100 years or more have passed since the date of birth.” *Id.* § 26-2-22(4)(a).

*Supplementary birth certificates.* If a person is legitimized by the subsequent marriage of his or her natural parents, he or she may request the state registrar to issue a supplementary birth certificate, indicating his or her legitimate status. After this supplementary certificate is registered, the original birth certificate is not open to inspection, except upon an order of a Utah district court, or upon the mutual consent of the person and his or her parents. *See id.* § 26-2-10(4).

*Adoption records.* The Bureau of Vital Statistics may not release adoption reports (which include detailed health histories and genetic and social histories, but which do not identify the adoptees’ birth parents or families) to the general public. *See id.* § 78B-6-143(4). Subject to several exceptions, adoption records are open to inspection by the public only upon express court order for good cause or “on the one hundredth anniversary of the date the final decree of adoption was entered.” *Id.* § 78B-6-141(2)(c), (e).

#### 2. Marriage & divorce.

Except for the information required to be shown on the marriage license application form, any information given by a marriage license applicant to comply with the statute “shall be confidential information and shall not be released by any person, board, commission or other entity.” Utah Code Ann. § 30-1-37. The statute also provides, however, that statistical data based on the information provided by a marriage license applicant may be used, without identifying specific individuals, by the premarital counseling boards appointed by the county boards of commissioners. *See id.*

The court file in a divorce proceeding may be sealed by the court upon the motion of either party to the divorce court. The sealed file is available to the public only by court order, but the divorce decree

itself is open to public inspection. *See id.* § 30-3-4(2). In 1995, United States Congresswoman Enid Greene Waldholtz successfully moved to seal the court file in her divorce action against Joseph Waldholtz. The Congresswoman filed for divorce after she and her husband became embroiled in a controversy involving financial misconduct. After several news organizations intervened, the court vacated its order sealing the records and held that the Waldholtzs’ divorce records were public. *Waldholtz v. Waldholtz*, No. 954904704 (Utah 3d Dist. January 16, 1996).

If a husband and wife file a petition with the family court division seeking conciliation (to preserve the marriage or to effect an amicable settlement of their controversy), the parties’ names and the contents of the conciliation petitions shall not be open to public inquiry, except that an attorney representing one of the spouses may determine from the clerk of the court if the other spouse has filed a conciliation petition. *See id.* § 30-3-16.6. The conciliation petition and all communications pertaining to the conciliation “shall be deemed to be made in official confidence within the meaning of Section 78B-1-137 and shall not be admissible or usable for any purpose in any divorce hearing or any other proceeding.” *Id.* § 30-3-17.1 .

#### 3. Death certificates.

Death records may be disclosed only where the Bureau of Vital Statistics determines that the applicant has a “direct, tangible, and legitimate interest” in the record, unless 50 years or more have passed since the date of the death. Utah Code Ann. § 26-2-22(4).

#### 4. Infectious disease and health epidemics.

Communicable disease information relating to an individual is confidential and may be released only in accordance with enumerated requirements. *See Utah Code Ann.* § 26-6-27.

## V. PROCEDURE FOR OBTAINING RECORDS

### A. How to start.

#### 1. Who receives a request?

A government entity may make rules designating where and to whom a record request shall be directed. *See Utah Code Ann.* § 63G-2-204(2)(d).

#### 2. Does the law cover oral requests?

A person wanting access to a record must provide the government entity with a written request. *See Utah Code Ann.* § 63G-2-204(1).

#### b. If an oral request is denied:

#### 3. Contents of a written request.

A written request must contain the requester’s name, mailing address, and daytime telephone number, as well as a reasonable description of the record requested. *See Utah Code Ann.* § 63G-2-204(1).

#### a. Description of the records.

The description of the records must be “reasonable.” *See Utah Code Ann.* § 63G-2-204(1).

#### b. Need to address fee issues.

Not addressed in the context of a written request.

#### c. Plea for quick response.

To obtain an expedited response, the requester must demonstrate that the record request benefits the public rather than the individual requester. *See Utah Code Ann.* § 63G-2-204(3)(a). Journalists requesting records for publication or broadcast are presumed to be acting to benefit the public. *See id.* § 63G-2-204(3)(c).

#### d. Can the request be for future records?

Not addressed.

## B. How long to wait.

### 1. Statutory, regulatory or court-set time limits for agency response.

The government entity must respond to a written request no later than ten business days after receiving the request. If the request is entitled to expedited treatment, the government entity must respond within five business days after receiving the request. *See* Utah Code Ann. § 63G-2-204(3)(a)

To obtain an expedited response, the requester must demonstrate that the record request benefits the public rather than the individual requester. *See id.* § 63G-2-204(3)(a). Journalists requesting records for publication or broadcast are presumed to be acting to benefit the public. *See id.* § 63G-2-204(3)(c).

The government entity shall respond to a person's written request, within the prescribed time limits, in the following manner:

- (i) approving the request and providing the record;
- (ii) denying the request;
- (iii) notifying the requester that the entity does not maintain the record and providing, if known, the name and address of the government entity that does maintain the record; or
- (iv) notifying the requester that because of the extraordinary circumstances listed [in that section of the statute], it cannot immediately approve or deny the request.

*Id.* § 63G-2-204(3)(a).

A notice of denial shall include (a) a description of the record; (b) citations to the GRAMA provisions that exempt the record from disclosure; (c) a statement that the requester has a right to appeal the denial; and (d) the time limits for filing an appeal and the name and address of the chief administrative officer of the government entity to which the appeal should be made. *See id.* § 63G-2-205(2).

### 2. Informal telephone inquiry as to status.

Not addressed.

### 3. Is delay recognized as a denial for appeal purposes?

If an entity fails to provide the requested records or notification of denial within the specified time period, the failure is equivalent to denial of access. *See* Utah Code Ann. § 63G-2-204(7).

The following is a list of "extraordinary circumstances" that allow a government entity additional time in which to comply with a record request, including the additional time allowed for each circumstance listed:

- (i) "[A]nother governmental entity is using the record, in which case the originating entity shall request that the entity currently in possession return the record." *Id.* § 63G-2-204(4)(a). In such a case, the entity currently in possession of the record shall return the record within five business days, unless it would impair the holder's work. *See id.* § 63G-2-204(5)(a).
- (ii) "[A]nother 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." *Id.* § 63G-2-204(4)(b). In this case, the originating entity shall notify the requester when the record is available. *See id.* § 63G-2-204(5)(b).
- (iii) The request is for a large quantity of records, the government entity possesses a large number of requests at the current time, or the request requires the government entity to review a large number of records. *See id.* § 63G-2-204(4)(c)-(e). In these cases, the government entity shall: (a) disclose the records that it has located and the requester is entitled to inspect; (b) provide the requester with a time estimate of when the additional records will

be available; and (c) complete the work and disclose the records as soon as reasonably possible. *See id.* § 63-2-204(5)(c).

(iv) The request involves unresolved legal issues "that require the governmental entity to seek legal counsel for analysis." *Id.* § 63G-2-204(4)(f). In this case, the government entity shall have an additional five business days to either approve or deny the request. *See id.* § 63G-2-204(5)(d).

(v) The segregation of records requires extensive editing. *See id.* § 63G-2-204(4)(g). In this case, the government entity is allowed 15 business days from the original request to comply. *See id.* § 63G-2-204(5)(e).

(vi) The segregation of records requires computer programming. *See id.* § 63G-2-204(4)(h). In this case, the government entity must respond as soon as reasonably possible. *See id.* § 63G-2-204(5)(f).

### 4. Any other recourse to encourage a response.

Not addressed.

## C. Administrative appeal.

### 1. Time limit.

A notice of appeal must be filed within 30 days of the access determination. *See* Utah Code Ann. § 63G-2-401.

### 2. To whom is an appeal directed?

Decisions of the appeals boards of the political subdivisions can be appealed to the district court. *See* Utah Code Ann. § 63G-2-701(6).

#### a. Individual agencies.

A person aggrieved by a government entity's access determination can file a notice of appeal with the government entity's chief administrative officer. *See* Utah Code Ann. § 63G-2-401(1).

A political subdivision is entitled to establish a separate appeals process. *See id.* § 63G-2-701(4)(a).

The political subdivision must provide for an appeals board composed of either: (a) the political subdivision's governing body, or (b) members of the governing body and the public, appointed by the governing body. *See id.* § 63G-2-701(4)(B).

A political subdivision that adopts an appeals process must submit a copy and a summary description to the state archives. *See id.* § 63G-2-701(7).

Political subdivisions can provide for an additional level of administrative review by the State Records Committee. *See id.* § 63G-2-701(5).

### 3. Fee issues.

Presumably the chief administrative officer could determine the reasonableness of duplication fees.

### 4. Contents of appeal letter.

The notice of appeal shall include the petitioner's name, address, and daytime phone number, as well as the relief sought. Utah Code Ann. § 63G-2-401(2). The notice of appeal also may include a statement of the facts and legal support for the claim. *Id.* § 63G-2-401(3).

### 5. Waiting for a response.

The chief administrative officer must make a determination on the appeal within five business days of receiving the notice of appeal or, if a business confidentiality claim is at issue, within twelve business days of receiving the notice of appeal. *See* Utah Code Ann. § 63G-2-401(5). If no determination is made within the specified time period, the failure to make a determination shall be considered an order denying the appeal. *See id.* In *Young v. Salt Lake County*, 52 P.3d 1240, 1243 (Utah

2002), the Utah Supreme Court concluded that the chief administrative officer's belated response to an appeal was the determinative date in evaluating the timeliness of an appeal. The court held that the chief administrative officer's eventual response to the appeal enabled the petitioner to file a petition for judicial review within 30 days from the response. If the chief administrative officer had not responded at all, however, the petitioner's appeal would have been deemed untimely, as it was outside the 35-day period provided by Utah Code section 63G-2-404(2)(b)(ii). *See id.* at 1244.

#### 6. Subsequent remedies.

An individual may appeal the chief administrative officer's determination to the State Records Committee. The notice of appeal must be filed with the executive secretary within 30 days of the chief administrative officer's final determination, or within 45 days of the original record request if the chief administrative officer failed to make a determination or if the appeal is of the government entity's claimed extraordinary circumstances. *See Utah Code Ann.* § 63G-2-403(1).

The Records Committee, within three days after receiving the notice of appeal, must schedule a hearing to take place no sooner than 14 days and no later than 45 days after the filing date. *See id.* § 63G-2-403(4).

The Records Committee must make a final determination and issue a signed order within five business days of the hearing. *See id.* § 63G-2-403(11)(a).

If the Records Committee fails to issue a decision within 57 calendar days of the filing of the notice of appeal, the failure shall be considered a denial. *See id.* § 63G-2-403(13).

#### D. Court action.

##### 1. Who may sue?

Any individual may appeal the State Records Committee's or the government entity's decision by filing a petition with the district court. *See Utah Code Ann.* § 63G-2-404.

##### 2. Priority.

The court shall decide the appeal at the "earliest practical opportunity." Utah Code Ann. § 63G-2-404(7)(c).

##### 3. Pro se.

Although it certainly is possible for individuals to represent themselves in a *pro se* lawsuit challenging the denial of records access, it is not always advisable. The statutory law governing records access in Utah is complex and ever-changing. As a result, it is usually beneficial to seek legal advice.

##### 4. Issues the court will address:

###### a. Denial.

The court shall rule on the propriety of any denial of access and may order the disclosure of records properly classified as private, controlled, or protected if the interest favoring access outweighs the interest against access. *See Utah Code Ann.* § 63G-2-404(8)(a).

###### b. Fees for records.

Presumably, the court could rule on the reasonableness of duplication fees charged by government entities.

###### c. Delays.

If the government entity fails to provide the requested records or to issue a denial within the specified time period, such failure is equivalent to a denial of access and may be appealed as such. *See Utah Code Ann.* § 63G-2-204(7). In addition, a requester may judicially challenge the government entity's use of the "extraordinary circumstances" provision in Utah Code section 63-2-204(4).

##### d. Patterns for future access (declaratory judgment).

The court can order the disclosure of a record with restrictions on future access. *See Utah Code Ann.* § 63G-2-404(8)(b).

##### 5. Pleading format.

The petition is a complaint, the format and the contents of which are governed by the Utah Rules of Civil Procedure. *See Utah Code Ann.* § 63G-2-404(3).

##### 6. Time limit for filing suit.

The petition must be filed within the following time periods: within 30 days of the State Record Committee's order; within 30 days of a government entity's denial of a record request; within 35 days of the original record request if the government entity fails to respond; or within 45 days of the original request if the records classification is in question and the chief administrative officer fails to make a determination. *See Utah Code Ann.* § 63G-2-404(1)(b), (2)(b).

##### 7. What court.

The appeal must be filed with the district court for the State of Utah.

##### 8. Judicial remedies available.

The district court shall review *de novo*, and without a jury, a party's petition for review of a records committee decision. *See Utah Code Ann.* § 63G-2-404(7).

The court can order the disclosure of the record with restrictions on future access. *See id.* § 63G-2-404(8)(b).

The court may enjoin a government entity that violates or proposes to violate GRAMA's provisions. *See id.* § 63G-2-802(1).

##### 9. Litigation expenses.

###### a. Attorney fees.

The court may assess against the government entity the reasonable attorneys' fees incurred by the requester if the requester substantially prevails on appeal. *See Utah Code Ann.* § 63G-2-802(2). The court *shall* award attorneys' fees and costs to prevailing records requesters if the government entity asserts the records are confidential under Utah Code section 63-2-405 and the court denies confidential treatment under that section and determines that no statutory or constitutional exemption from disclosure "could reasonably apply to the record in question." *Id.* § 63G-2-405(2).

###### b. Court and litigation costs.

The court shall award attorneys' fees and costs to prevailing records requesters if the government entity asserts the records are confidential under Utah Code section 63-2-405 and the court denies confidential treatment under that section and determines that no statutory or constitutional exemption from disclosure "could reasonably apply to the record in question." Utah Code Ann. § 63G-2-405(2).

##### 10. Fines.

A public employee who intentionally refuses to release a public record is guilty of a class B misdemeanor. *See Utah Code Ann.* § 63G-2-801(3). A class B misdemeanor is punishable by a fine not exceeding \$1,000 and/or imprisonment of up to six months. *See id.* §§ 76-3-204(2), 76-3-301(1)(d).

##### 11. Other penalties.

A government entity or political subdivision may take disciplinary action, including suspension or discharge, against any employee who intentionally violates GRAMA's provisions. *See Utah Code Ann.* § 63G-2-804.

## 12. Settlement, pros and cons.

Not addressed.

### E. Appealing initial court decisions.

#### 1. Appeal routes.

Depending on the identity of the agency or court that entered the order from which appeal is taken, the appeal will be either to the Utah Court of Appeals or to the Utah Supreme Court. *See* Utah Code Ann. §§ 78A-3-102, 78A-4-103.

#### 2. Time limits for filing appeals.

A notice of appeal must be filed within 30 days after entry of judgment. *See* Utah R. App. P. 4(a).

#### 3. Contact of interested amici.

If you are filing an appeal with an appellate court, you should contact other interested groups who may want to file *amicus* briefs or to assist with the legal research needed to support your arguments. In Utah, the following groups have participated actively in record-access issues: Society of Professional Journalists, Reporters Committee for Freedom of the Press, Utah Common Cause, American Civil Liberties Union, Utah Issues, Utah Legal Services, and Utah League of Women's Voters.

### F. Addressing government suits against disclosure.

Not addressed.

## Open Meetings

### I. STATUTE -- BASIC APPLICATION.

#### A. Who may attend?

In Utah, any person may attend an open government meeting. *See* Utah Code Ann. § 52-4-303(3).

#### B. What governments are subject to the law?

All "public bodies" are subject to the Utah Open and Public Meetings Act ("Open Meetings Act"). "Public body" includes "any administrative, advisory, executive, or legislative body of the state or its political subdivisions that: (i) is created by the Utah Constitution, statute, rule, ordinance, or resolution; (ii) consists of two or more persons; (iii) expends, disburses, or is supported in whole or in part by tax revenue; and (iv) is vested with the authority to make decisions regarding the public's business." Utah Code Ann. § 52-4-103(7)(a). "Public body" does *not* include a: (i) political party, political group, or political caucus; or (ii) conference committee, rules committee, or sitting committee of the Legislature." *Id.* § 52-4-103(7)(b)(emphasis added).

##### 1. State.

State governments and their advisory committees are subject to the Open Meetings Act. *See* Utah Code Ann. § 52-4-103(7)(a).

##### 2. County.

County governments and their advisory committees are subject to the Open Meetings Act. *See* Utah Code Ann. § 52-4-103(7)(a).

##### 3. Local or municipal.

Local and municipal governments and their advisory committees are subject to the Open Meetings Act. *See* Utah Code Ann. § 52-4-103(7)(a).

#### C. What bodies are covered by the law?

##### 1. Executive branch agencies.

All executive branch agencies are subject to the Open Meetings Act, unless they consist of less than two people. Utah Code Ann. § 52-4-103(7)(a)(ii).

##### 2. Legislative bodies.

All legislative branch entities are subject to the Open Meetings Act, *except* political parties, groups, or caucuses, or rules or sifting committees, or those legislative bodies consisting of less than two persons. *See* Utah Code Ann. § 52-4-103(7)(a)-(b).

##### 3. Courts.

The judicial branch is not expressly subject to the Open Meetings Act. *See* Utah Code Ann. § 52-4-103(7)(a). Further, in *Common Cause of Utah v. Utah Pub. Serv. Comm'n*, 598 P.2d 1312 (Utah 1979), the Utah Supreme Court determined that although the information-gathering phase of an agency's quasi-judicial proceedings had to be conducted in public, the deliberations of quasi-judicial agencies could be conducted in secret (even though the Open Meetings Act provides for no such exemption). *Id.* at 1315. This decision has been criticized severely. *See, e.g.,* Comment, *Common Cause v. Utah Public Service Commission—The Applicability of Open-Meeting Legislation to Quasi-Judicial Bodies*, 1980 Utah L. Rev. 829. Nonetheless, the Utah Supreme Court reaffirmed the exemption for quasi-judicial deliberations in *Andrews v. Utah Bd. of Pardons*, 836 P.2d 790, 793-94 (Utah 1992), holding that the Board of Pardons's deliberations were exempt from the statute, and in *Dairy Prod. Serv. Inc. v. City of Wellsville*, 2000 UT 81, 13 P.3d 581, holding that the Wellsville City Council did not violate the statute by conducting closed deliberations regarding renewal of a business license.

Although the Open Meetings Act does not apply to the courts, judicial proceedings are traditionally open to the public and, in recent years, the courts have recognized a qualified constitutional right to

attend such proceedings. *See, e.g., Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 7-15 (1986) (public and press have first amendment right to attend criminal preliminary hearings); *Publiker Indus. Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984) (public and press have first amendment right to attend civil proceedings); *Kearns-Tribune Corp. v. Lewis*, 685 P.2d 515, 518-20 (Utah 1984) (public has constitutional right of access to criminal trials and preliminary hearings, subject to certain limited exceptions to protect defendants' sixth amendment rights); *see generally* Note, *Society of Professional Journalists v. Briggs: Toward a Deferential Balancing Test for the Right of Access*, 1989 Utah L. Rev. 787 (discussing first amendment right of access to judicial proceedings and records).

#### 4. Nongovernmental bodies receiving public funds or benefits.

Nongovernment bodies receiving public funds or benefits are *not* subject to the Open Meetings Act, unless such bodies are advisory bodies for the government. *See* Utah Code Ann. § 52-4-103(7).

#### 5. Nongovernmental groups whose members include governmental officials.

Nongovernment groups whose members include government officials are *not* subject to the Open Meetings Act, unless such groups are advisory bodies for the government. *See* Utah Code Ann. § 52-4-103(7).

#### 6. Multi-state or regional bodies.

The Open Meetings Act does not state whether multistate or regional bodies (such as planning authorities) fall within its scope. However, if a quorum of a public body meets at a multistate or regional meeting, and discusses or takes action on a subject over which the public body has jurisdiction, the Open Meetings Act arguably should apply. *See* Utah Code Ann. § 52-4-103(7).

#### 7. Advisory boards and commissions, quasi-governmental entities.

Advisory boards and commissions and other quasi-government entities *are* subject to the Open Meetings Act. *See* Utah Code Ann. § 52-4-103(7)(a).

#### 8. Other bodies to which governmental or public functions are delegated.

Other bodies to which government or public functions are delegated are subject to the Open Meetings Act if such bodies fall within the definition of "public body." *See* Utah Code Ann. § 52-4-103(7).

#### 9. Appointed as well as elected bodies.

The Open Meetings Act applies to appointed as well as elected bodies. *See* Utah Code Ann. § 52-4-103(7).

### D. What constitutes a meeting subject to the law.

"Meeting" is defined in the Open Meetings Act as "the convening of a public body, with a quorum present, including a workshop or an executive session whether the meeting is held in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power." Utah Code Ann. § 52-4-103(4)(a). "Meeting" does not mean a chance meeting, a social meeting, or the convening of a public body that has both legislative and executive responsibilities (such as most county commissions) where no public funds are appropriated for expenditure during the time in which the public body is convened and: (i) the public body is convened solely for the discussion or implementation of administrative or operational matters for which no formal action by the public body is required; or (ii) the public body is convened solely for the discussion or implementation of administrative or operational matters that would not come before the public body for discussion or action. *Id.* § 52-4-103(b).

"Convening" is defined in the Open Meetings Act as "the calling of a meeting of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power." *Id.* § 52-4-103(2). In other words, so-called "informal" or "executive" meetings are subject to the Open Meetings Act, unless they are exempt from the definition of a "meeting" under Utah Code section 52-4-103(4)(b).

#### 1. Number that must be present.

##### a. Must a minimum number be present to constitute a "meeting"?

For a meeting to convene, a quorum must be present. *See* Utah Code Ann. § 52-4-103(4)(a). "Quorum" is defined in the Open Meetings Act as "a simple majority of the membership of a public body, unless otherwise defined by applicable law." *Id.* § 52-4-103(9)(a). "Quorum" does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power." *Id.* § 52-4-103(9)(b).

##### b. What effect does absence of a quorum have?

If a quorum is not present, the meeting is not subject to the Open Meetings Act unless the sub-quorum group constitutes an advisory body. *See* Utah Code Ann. § 52-4-103(4)(a).

#### 2. Nature of business subject to the law.

##### a. "Information gathering" and "fact-finding" sessions.

"Information-gathering" and "fact-finding" sessions are subject to the Open Meetings Act. *See* Utah Code Ann. § 52-4-103(2), (4)(a); *id.* § 52-4-201.

##### b. Deliberations toward decisions.

Deliberations toward decisions are subject to the Open Meetings Act. *See* Utah Code Ann. § 52-4-103(2), (4)(a).

#### 3. Electronic meetings.

##### a. Conference calls and video/Internet conferencing.

An "electronic meeting," defined as "a public meeting convened or conducted by means of a conference using electronic communications," is subject to the Open Meetings Act. Utah Code Ann. § 52-4-103(3). The Act's definition of "meeting" also indicates that a meeting can be "by means of electronic communications." *See id.* § 52-4-103(4)(a).

##### b. E-mail.

E-mail may qualify as an "electronic meeting" that is "convened or conducted by means of a conference using electronic communications." *See* Utah Code Ann. § 52-4-103(3).

##### c. Text messages.

Text messages may qualify as an "electronic meeting" that is "convened or conducted by means of a conference using electronic communications." *See* Utah Code Ann. § 52-4-103(3).

##### d. Instant messaging.

Instant messaging may qualify as an "electronic meeting" that is "convened or conducted by means of a conference using electronic communications." *See* Utah Code Ann. § 52-4-103(3).

##### e. Social media and online discussion boards.

Social media and online discussion boards may qualify as an "electronic meeting" that is "convened or conducted by means of a conference using electronic communications." *See* Utah Code Ann. § 52-4-103(3).

## E. Categories of meetings subject to the law.

### 1. Regular meetings.

#### a. Definition.

All government meetings must be open to the public unless they are closed pursuant to an express exemption in the Open Meetings Act. Utah Code Ann. § 52-4-201.

#### b. Notice.

##### (1). Time limit for giving notice.

A public body must give “not less than 24 hours public notice” of the agenda, date, time, and place of each of its meetings. Utah Code Ann. § 52-4-202(1). In addition, “a public body which holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once each year of its annual meeting schedule,” which notice must “specify the date, time, and place of the scheduled meetings.” *Id.* § 52-4-202(2).

##### (2). To whom notice is given.

A public body must provide public notice by posting written notice at its principal office or, if no such office exists, at the building where the meeting is to be held and by providing notice to at least one newspaper of general circulation within the geographic jurisdiction, or to a local media correspondent. Utah Code Ann. § 52-4-202(3)(a).

##### (3). Where posted.

Notice must be posted at the public body’s principal office (or if no office exists, at the building where the meeting is to be held). Utah Code Ann. § 52-4-202(3)(a)(i)(A).

##### (4). Public agenda items required.

A public body must give “not less than 24 hours public notice” of each meeting’s agenda. Utah Code Ann. § 52-4-202(1)(a). Although “[t]he absence of an item of business on the Agenda does not preclude its consideration, it would clearly violate the public policy behind the Act to strategically hide sensitive public issues behind the rubric of other business.” *Ward v. Richfield City*, 798 P.2d 757, 759 (Utah 1990) (internal quotations omitted).

##### (5). Other information required in notice.

Notices also must specify the date, time, and place of the meeting. Utah Code Ann. § 52-4-202(1)(b)-(d).

##### (6). Penalties and remedies for failure to give adequate notice.

Any final action taken by a public body in violation of the Open Meetings Act is “voidable by a court of competent jurisdiction.” Utah Code Ann. § 52-4-302(1)(a) (emphasis added). “Voidable” means that the court *may* overturn the action; it does not mean that the action is automatically void. The court may award court costs and reasonable attorneys’ fees to a successful plaintiff. *Id.* § 52-4-303(4).

#### c. Minutes.

##### (1). Information required.

The Open Meetings Act requires that written minutes be kept of all open meetings and that such minutes include:

- (a) the date, time, and place of the meeting;
- (b) the names of members present and absent;
- (c) the substance of all matters proposed, discussed, or decided by the public body which may include a summary of comments made by members of the public body;
- (d) a record, by individual member, of each vote taken by the public body;
- (e) the name of each person who:
  - (i) is not a member of the public body; and

- (ii) after being recognized by the presiding member of the public body, provided testimony or comments to the public body;

- (f) the substance, in brief, of the testimony or comments provided by the public under Subsection (2)(e); and

- (g) any other information that is a record of the proceedings of the meeting that any member requests be entered in the minutes or recording.

Utah Code Ann. § 52-4-203(2).

##### (2). Are minutes public record?

The Open Meetings Act states that these minutes are public records and shall be available within a reasonable time after the meeting. Utah Code Ann. § 52-4-203(4)(b). “A recording of an open meeting shall be available to the public for listening within three business days after the end of the meeting.” *Id.* § 52-4-203(4)(f).

### 2. Special or emergency meetings.

#### a. Definition.

An “emergency meeting” may be held by a public body if “because of unforeseen circumstances it is necessary for a public body to hold an emergency meeting to consider matters of an emergency or urgent nature.” Utah Code Ann. § 52-4-202(5)(a)(i). A public body may not hold an emergency meeting unless “(i) an attempt has been made to notify all the members of the public body; and (ii) a majority of the members of the public body approve the meeting.” *Id.* § 52-4-202(5)(b).

#### b. Notice requirements.

If the statutory prerequisites for an emergency meeting are satisfied, the usual notice requirements “may be disregarded if . . . the public body gives the best practicable notice of . . . the time and place of the emergency meeting; and . . . the topics to be considered at the emergency meeting.” Utah Code Ann. § 52-4-202(5)(a)(ii).

##### (1). Time limit for giving notice.

Not applicable.

##### (2). To whom notice is given.

Not applicable.

##### (3). Where posted.

Not applicable.

##### (4). Public agenda items required.

Not applicable.

##### (5). Other information required in notice.

Not applicable.

##### (6). Penalties and remedies for failure to give adequate notice.

Because the public body must provide the best notice practicable, presumably a public body may violate the notice requirement. In such a case, the same penalties and remedies set forth above may be available. Specifically, any final action taken by the public body in violation of the Open Meetings Act may be “voidable by a court of competent jurisdiction.” Utah Code Ann. § 52-4-302(1)(a) (emphasis added). The court also may award court costs and reasonable attorneys’ fees to a successful plaintiff. *Id.* § 52-4-303(4).

#### c. Minutes.

##### (1). Information required.

Unless an emergency meeting is “closed,” the same minutes must be kept as for an open non-emergency meeting. *See* Utah Code Ann. § 52-4-203.

**(2). Are minutes a public record?**

The Open Meetings Act states that these minutes are public records and shall be available within a reasonable time after the meeting. *See* Utah Code Ann. § 52-4-203(4)(b).

**3. Closed meetings or executive sessions.****a. Definition.**

The Open Meetings Act states that closed meetings *may* be held for discussion of an individual's character, professional competence, or physical or mental health; strategy sessions to discuss collective bargaining and pending or reasonably imminent litigation; strategy sessions to discuss the purchase, exchange, lease, or sale of real property under specified conditions; discussions regarding deployment of security personnel, devices, or systems; investigative proceedings regarding criminal misconduct allegations; certain discussions by the Independent Legislative Ethics Committee, an ethics committee of the Legislature, or a county legislative body; and a purpose for which a meeting must be closed under Utah Code section 52-4-205(2). Utah Code Ann. § 52-4-205(1). In contrast, meetings of the Health and Human Services Interim Committee and of the Child Welfare Legislative Oversight Panel to review fatality review reports, and their responses to such reports, *must* be closed. *Id.* § 52-4-205(2).

Despite the Open Meetings Act's literal prohibition against holding a closed meeting for any purpose other than those set forth in Utah Code section 52-4-205, it appears likely that a public body also could close a meeting if such closure were authorized expressly by another state statute. The Utah Supreme Court has held that the *deliberations* of an agency acting in a quasi-judicial capacity may be conducted in secret, even though no statutory authorization exists for such secret deliberations. *See Dairy Prod. Serv. Inc. v. City of Wellsville*, 2000 UT 81, 13 P.3d 581; *Andrews v. Utah Bd. of Pardons*, 836 P.2d 790 (Utah 1992); *Common Cause of Utah v. Utah Pub. Serv. Comm'n*, 598 P.2d 1312, 1315 (Utah 1979).

A meeting held by the city to discuss the circumstances surrounding a lawsuit, possible outcomes, and suggested actions that should be taken in light of the lawsuit constituted a "strategy session" within the meaning of Utah Code section 52-4-5(1) (renumbered as section 52-4-205(1)(c)) and therefore was closed properly. *Poll v. South Weber City*, No. 20040888-CA, 2005 WL 1177231, at \*2 (Utah Ct. App. May 19, 2005).

"An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting." Utah Code Ann. § 52-4-204(3). This means that a public body may not take any final action at a closed meeting, even for those matters that are exempt under Utah Code section 52-4-205(1).

"A public body may not interview a person applying to fill an elected position in a closed meeting." *Id.* § 52-4-205(3).

A meeting generally may be closed only if "a quorum is present," if "the meeting is an open meeting for which notice has been given," and if "two-thirds of the members of the public body present at the open meeting vote to approve closing the meeting." *Id.* § 52-4-204(1). In other words, a decision to close a meeting must be made in public, at an open meeting.

**b. Notice requirements.****(1). Time limit for giving notice.**

A public body must give "not less than 24 hours public notice" of the agenda, date, time, and place of each of its meetings. Utah Code Ann. § 52-4-202(1). In addition, "a public body which holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once each year of its annual meeting schedule," which notice must "specify the date, time, and place of the scheduled meetings." *Id.* § 52-4-202(2).

**(2). To whom notice is given.**

A public body must provide public notice by posting written notice at its principal office or, if no such office exists, at the building where the meeting is to be held and by providing notice to at least one newspaper of general circulation within the geographic jurisdiction, or to a local media correspondent. Utah Code Ann. § 52-4-202(3)(a).

**(3). Where posted.**

Notice must be posted at the public body's principal office (or if no office exists, at the building where the meeting is to be held). Utah Code Ann. § 52-4-202(3)(a)(i)(A).

**(4). Public agenda items required.**

A public body must give "not less than 24 hours public notice" of each meeting's agenda. Utah Code Ann. § 52-4-202(1)(a). Although "[t]he absence of an item of business on the Agenda does not preclude its consideration, it would clearly violate the public policy behind the Act to strategically hide sensitive public issues behind the rubric of other business." *Ward v. Richfield City*, 798 P.2d 757, 759 (Utah 1990) (internal quotations omitted).

**(5). Other information required in notice.**

Notices also must specify the date, time, and place of the meeting. Utah Code Ann. § 52-4-202(1)(b)-(d).

**(6). Penalties and remedies for failure to give adequate notice.**

Any final action taken by a public body in violation of the Open Meetings Act is "*voidable* by a court of competent jurisdiction." Utah Code Ann. § 52-4-302(1)(a) (emphasis added). "Voidable" means that the court *may* overturn the action; it does not mean that the action is automatically void. The court may award court costs and reasonable attorneys' fees to a successful plaintiff. *Id.* § 52-4-303(4).

**c. Minutes.****(1). Information required.**

Written minutes must be kept of all closed meetings and shall include: (a) the date, time, and place of the meeting; (b) the names of all members present and absent; (c) the names of all others present except where such disclosure would infringe on the confidence necessary to fulfill the original purpose of closing the meeting. Utah Code Ann. § 52-4-7(2).

**(2). Are minutes a public record?**

The minutes of a closed meeting are designated as public records and shall be available within a reasonable time after the meeting. Utah Code Ann. § 52-4-7(3).

**d. Requirement to meet in public before closing meeting.**

The public body must hold "an open meeting for which notice has been given under [Utah Code section 52-4-202]" and in which two-thirds of the members present must vote to close the meeting. Utah Code Ann. § 52-4-204(1).

**e. Requirement to state statutory authority for closing meetings before closure.**

The reasons for holding the closed meeting, the location where the closed meeting will be held, and the members' votes on whether to close the meeting must be recorded in the minutes. Utah Code Ann. § 52-4-204(4).

**f. Tape recording requirements.**

If a public body holds a closed meeting for purposes other than those set forth in Utah Code sections 52-4-205(1)(a), (1)(f), or (2),

the public body “shall make a recording of the closed portion of the meeting,” and “may keep detailed written minutes that disclose the content of the closed portion of the meeting.” Utah Code Ann. § 52-4-206(1), (6). Tape recordings and written minutes of closed meetings are protected records. *Id.* § 52-4-206(5). In an action challenging the legality of a closed meeting, the court shall review the tape recording or written minutes in camera. *Id.* § 52-4-304(1)(a). “If the judge determines that the public body violated [the provisions] regarding closed meetings, the judge shall publicly disclose or reveal from the tape recordings or minutes . . . all the information about the portion of the meeting that was illegally closed.” *Id.* § 52-4-304(2)(b).

## F. Recording/broadcast of meetings.

### 1. Sound recordings allowed.

Utah Code section 52-4-203(5) states that “[a]ll or any part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting.”

### 2. Photographic recordings allowed.

Utah Code section 52-4-203(5) does not distinguish between sound recordings and photographic recordings, and it appears that either is permissible as long as no disruption of the proceedings results.

## G. Are there sanctions for noncompliance?

A person denied any right under the Open Meetings Act may commence suit in a court of competent jurisdiction to compel compliance with or enjoin violations of this chapter, or to determine this chapter’s applicability to a public body’s discussions or decisions. Utah Code Ann. § 52-4-303(3). In addition, the court may award reasonable attorney fees’ and court costs to a successful plaintiff. *Id.* § 52-4-303(4).

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open meetings statute.

#### 1. Character of exemptions.

##### a. General or specific.

The exemptions are specific. “A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under [Utah Code section] 52-4-205.” Utah Code Ann. § 52-4-204(2).

##### b. Mandatory or discretionary closure.

“Except as provided in [Utah Code section] 52-4-205(2), nothing in this chapter shall be construed to require any meeting to be closed to the public.” Utah Code Ann. § 52-4-204(5).

#### 2. Description of each exemption.

A closed meeting may be held for any of the following purposes:

- a. discussion of an individual’s character, professional competence, or physical or mental health;
- b. strategy sessions to discuss collective bargaining;
- c. strategy sessions to discuss pending or reasonably imminent litigation;
- d. strategy sessions to discuss purchase, exchange, or lease of real property if public discussion would prevent the public body from completing the transaction on best possible terms;
- e. strategy sessions to discuss the sale of real property if public discussion would prevent the public body from completing the transaction on best possible terms, as long as the body has previously given notice of the sale and the terms of the sale are disclosed publicly before approval;
- f. discussion regarding deployment of security personnel, devices, or systems;

g. investigative proceedings regarding criminal misconduct allegations.

h. business conducted by the Independent Legislative Ethics Commission regarding the receipt or review of ethics complaints;

i. a purpose of an ethics committee of the Legislature permitted under Utah Code section 52-4-204(1)(a)(iii)(B);

j. discussion of commercial information by a county legislative body; or

k. a purpose for which a meeting must be closed under Utah Code section 52-4-202(2).

Utah Code Ann. § 52-4-202(1).

### B. Any other statutory requirements for closed or open meetings.

1. Meetings of the Health and Human Services Interim Committee and of the Child Welfare Legislative Oversight Panel to review fatality review reports, and their responses to such reports, must be closed. Utah Code Ann. § 52-4-205(2).

2. The following meetings also are exempt from the Open Meetings Act:

a. portions of meetings of the Board of Financial Institutions which concern confidential information pertaining to a particular financial institution, Utah Code Ann. § 7-1-203(5); and

b. meetings of judicial nomination commissions. *Id.* § 20A-12-104(4).

3. The following government entities are required specifically by statute to comply with the Open Meetings Act:

a. the Uintah Basin Revitalization Fund Board, *id.* § 9-10-105(2);

b. governing bodies of municipalities, *id.* § 10-3-601;

c. municipal councils, *id.* § 10-3-1212;

d. municipal Boards of Adjustment, *id.* § 10-9-702;

e. county Boards of Adjustment, *id.* § 17-27-702;

f. the appointing authority of any special district board, *id.* § 17A-1-303;

g. the Alcoholic Beverages Control Commission’s adjudicative proceedings, *id.* § 32A-1-119(2)(c)(ii)(repealed effective July 1, 2011, by Laws 2010, c. 276, § 383);

h. the House, Senate, and Legislative Management Committee, subcommittee, or interim committee, *id.* § 36-12-10;

i. the Department of Public Safety, *id.* § 53-1-105; and

j. the State Building Board. *Id.* § 63A-5-102.

3. Statutory requirements for public hearings.

a. A city must hold a public hearing on budgets tentatively adopted. *Id.* § 10-6-114.

b. A city must hold a public hearing before designating any street as a “mall.” *Id.* § 10-15-6.

c. The governing body of a special district must hold a public hearing on budgets tentatively adopted. *Id.* § 17B-1-610.

d. The governing body of a county must hold a public hearing on budgets tentatively adopted. *Id.* § 17-36-13.

e. The local school board must hold a public meeting to discuss its proposed budget. *Id.* § 53A-19-102.

f. The Board of Child and Family Services and the Child Abuse Advisory Council must conduct public hearings before purchasing or contracting for any child abuse or neglect prevention or treatment program or service. *Id.* § 62A-4a-306.

g. The Division of Parks and Recreation must conduct a public hearing before establishing any recreational trail. *Id.* § 79-5-304.

h. A county must hold a public hearing to discuss a proposed agricultural protection area. *Id.* § 17-41-304.

i. Before approving a plan for underground conversion of public utilities, the governing body of the county, city, or town must hold a public meeting to discuss the proposed improvements. *Id.* § 54-8-9. Notice must be published in a newspaper of general circulation, posted in at least three public places, and mailed to each property owner within the district. *Id.* § 54-8-10.

j. The governing body of a municipality that wishes to consolidate must hold a public hearing on the proposed consolidation. *Id.* § 10-2-606.

k. The Utah Constitutional Revision Commission may hold public hearings “as it considers advisable.” *Id.* § 63I-3-205.

l. The Utah Tax Review Commission “may hold public hearings it considers advisable.” *Id.* § 59-1-904.

m. “The county board of equalization shall meet and hold public hearings each year to examine the assessment roll and equalize the assessment of property in the county.” *Id.* § 59-2-1001.

#### 4. Other statutory requirements.

a. All meetings of county legislative bodies shall be open to the public. *Id.* § 17-53-206.

b. Forestry, Fire and State Lands Advisory Council meetings “shall be widely advertised, with affected state agencies and public and private interests being directly notified of meeting schedules and agendas.” *Id.* § 65A-1-3.

c. Upon the filing of a formal complaint in a discipline matter, the filing of a petition for reinstatement, or the filing of a motion or petition for interim suspension, an attorney discipline proceeding is public, except as otherwise provided by a protective order. Utah R. Prof'l Prac. 15.

d. Meetings of the Property and Casualty Guaranty Association are open upon a majority vote of the Association's board of directors. *Id.* § 31A-28-205.

e. Meetings of the Utah Health Data Committee are public, with some exceptions. *Id.* § 26-33a-103.

f. Meetings of the Alcoholic Beverages Control Commission are open, with some exceptions. *Id.* § 32A-1-106.

g. All meetings of the State Money Management Council are open, with some exceptions. *Id.* § 51-7-16(4)(d).

h. Meetings of the Board of Financial Institutions are subject to the Open Meetings Act, except for discussion of confidential information pertaining to a particular financial institution. *Id.* § 7-1-203.

i. Meetings of the Judicial Council are open to the public unless closed in accordance with the Code of Judicial Administration. Utah R. Jud. Admin. 2-103.

j. All state legislature sessions shall be public, except for Senate executive sessions. Utah JR-13.12.

k. News media representatives shall be admitted to the Senate and House chambers, halls, lounges, and committee rooms. With permission, the news media may conduct interviews in the lounges, halls, available committee rooms, or in the House chamber or gallery. Utah SR-33.06, Utah HR-33.06.

l. If a House committee chooses to hold a public hearing in addition to, or instead of, a regular committee meeting, the committee chair shall give notice of the meeting in accordance with the Open Meetings Act. Utah HR-24.14.

m. Visitors may attend House committee meetings so long as the number of people present does not exceed the maximum occupancy of the committee room. Utah HR-24.22. Visitors may not sit in legislators' chairs and may not speak unless called upon by the chairman. *Id.*

### C. Court mandated opening, closing.

The Utah Supreme Court has held that the deliberation phase of quasi-judicial proceedings conducted by state agencies may be conducted in secret. *Common Cause of Utah v. Utah Pub. Serv. Comm'n*, 598 P.2d 1312, 1315 (Utah 1979). The court ruled, however, that the fact-finding portion of the agency's quasi-judicial proceeding must be conducted in public. *Id.*; see also *Dairy Prod. Serv. Inc. v. City of Wellsville*, 2000 UT 81, ¶ 61, 13 P.3d 581 (City Council deliberations on business license renewal could be closed where the information-gathering procedure and the final decision were conducted in public); *Andrews v. Utah Bd. of Pardons*, 836 P.2d 790, 792-93 (Utah 1992) (Board of Pardons's deliberations on commutation petition may be conducted in secret, but information-gathering proceedings must be open).

The Open Meetings Act is not applicable to meetings held by the Utah State Retirement Board. *Ellis v. Utah State Retirement Bd.*, 757 P.2d 882, 888 (Utah Ct. App. 1988). Also, the issuance of certificates of zoning compliance and building permits is an administrative action to be performed by a zoning administrator (or his or her representative) and by the building inspector, respectively. Because this issuance is merely an administrative action, the topic is not one required to be discussed in an open meeting and thus does not fall under the Open Meetings Act. *Harper v. Summit County*, 2001 UT 10, ¶ 38, 26 P.3d 193.

## III. MEETING CATEGORIES -- OPEN OR CLOSED.

### A. Adjudications by administrative bodies.

#### 1. Deliberations closed, but not fact-finding.

Deliberations of administrative bodies acting in a quasi-judicial capacity are closed, but the fact-finding portion of the quasi-judicial proceeding is open. See *Andrews v. Utah Bd. of Pardons*, 836 P.2d 790, 792-93 (Utah 1992); *Common Cause of Utah v. Utah Pub. Serv. Comm'n*, 598 P.2d 1312, 1315 (Utah 1979).

### B. Budget sessions.

Budget sessions are open to the public.

### C. Business and industry relations.

This topic (including discussions for attracting business to the state) is open to the public, but discussions *may* be closed to the extent they touch upon matters designated as exempt in the Open Meetings Act.

### D. Federal programs.

Meetings concerning federal programs are open to the public.

### E. Financial data of public bodies.

Meetings concerning financial data are open to the public.

### F. Financial data, trade secrets or proprietary data of private corporations and individuals.

The Open Meetings Act contains no exemption for these topics, but there are a number of statutes (summarized in the Open Records por-

tion of this outline) that state that records containing such data shall be confidential. It is possible that a court would allow a government entity to close that portion of a meeting that relates to topics classified as protected by statute. However, no express judicial decision on this point exists.

#### **G. Gifts, trusts and honorary degrees.**

The Open Meetings Act contains no provision that would allow meetings concerning these topics to be closed. However, the Government Records Access and Management Act (discussed in the Open Records portion of this outline) classifies as protected the names of the donors to public institutions of higher education, if so requested. Utah Code Ann. § 63G-2-304(37).

#### **H. Grand jury testimony by public employees.**

Although the Open Meetings Act contains no specific exemption for grand jury testimony by public employees, grand jury proceedings are secret. *See* Utah Code Ann. § 77-10a-13.

#### **I. Licensing examinations.**

There is no express provision in the Open Meetings Act that licensing examinations may be closed to the public, but the exemption concerning the “discussion of the character, professional competence, or physical or mental health of an individual” probably would be held to cover this situation. Utah Code Ann. § 52-4-205(1)(a).

#### **J. Litigation; pending litigation or other attorney-client privileges.**

Strategy sessions concerning pending or reasonably imminent litigation are exempt from the open meetings requirement. Utah Code Ann. § 52-4-205(1)(c).

In *Kearns-Tribune Corp. v. Salt Lake County Comm’n*, 2001 UT 55, ¶ 29, 28 P.3d 686, the Utah Supreme Court determined that county boundary commission proceedings held to discuss annexation disputes constituted litigation under the litigation exception to the Open Meetings Act, thereby justifying a closed meeting.

Attorney work product involved in litigation involving public entities probably would be exempt from disclosure under the judicially created work-product exemption and under the Utah Rules of Civil Procedure. *See also* Utah Code Ann. § 63G-2-304(17) (protecting records disclosing attorney’s work product).

#### **K. Negotiations and collective bargaining of public employees.**

##### **1. Any sessions regarding collective bargaining.**

Strategy sessions concerning collective bargaining are exempt from the Open Meetings Act. Utah Code Ann. § 52-4-205(1)(b). Given the specific exemption for “strategy sessions” set forth in the Open Meetings Act, it appears that all other elements of the negotiations and collective bargaining are subject to the open meetings requirement.

##### **2. Only those between the public employees and the public body.**

The exemption for collective bargaining sessions is not limited to those between the public employees and the public body. *See* Utah Code Ann. § 52-4-205(1)(b).

#### **L. Parole board meetings, or meetings involving parole board decisions.**

Proceedings of the Utah Board of Pardons and Parole are subject to the Open Meetings Act. *Andrews v. Utah Bd. of Pardons*, 836 P.2d 790, 792-93 (Utah 1992). Although Board *hearings*, during which information is gathered, are open to the public, *deliberations* may be closed. *Id.*

#### **M. Patients; discussions on individual patients.**

Discussions about an individual’s physical and mental health are exempt from the Open Meetings Act. Utah Code Ann. § 52-4-205(1)(a).

#### **N. Personnel matters.**

##### **1. Interviews for public employment.**

The interviews themselves appear to be subject to the Open Meetings Act, because it exempts only the “discussion” of an individual’s professional competence. *See* Utah Code Ann. § 52-4-205(1)(a).

##### **2. Disciplinary matters, performance or ethics of public employees.**

These discussions would appear to be exempt under the Open Meetings Act because they involve “discussion of the character, professional competence, or physical or mental health of an individual.” Utah Code Ann. § 52-4-205(1)(a). However, an agency’s final decision about a disciplinary matter must be made in public. *Id.* § 52-4-204(3).

##### **3. Dismissal; considering dismissal of public employees.**

These discussions would appear to be exempt under the Open Meetings Act because they involve “discussion of the character, professional competence, or physical or mental health of an individual.” Utah Code Ann. § 52-4-205(1)(a). However, an agency’s final decision about a disciplinary matter must be made in public. *Id.* § 52-4-204(3).

#### **O. Real estate negotiations.**

Strategy sessions relating to the purchase, exchange, lease, or sale of real property are exempt from the Open Meetings Act under certain conditions. Utah Code Ann. § 52-4-205(d).

#### **P. Security, national and/or state, of buildings, personnel or other.**

Discussions concerning the “deployment of security personnel, devices, or systems” are exempt from the Open Meetings Act. Utah Code Ann. § 52-4-205(f).

#### **Q. Students; discussions on individual students.**

Discussions about a student’s character or physical or mental health would be exempt from the Open Meetings Act. *See* Utah Code Ann. § 52-4-205(1)(a).

### **IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS**

#### **A. When to challenge.**

##### **1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?**

The Open Meetings Act does not require any expedited judicial review of requests to attend upcoming meetings. However, expedited remedies are available under the Utah Rules of Civil Procedure. *See* Utah R. Civ. P. 65A (temporary restraining orders).

##### **2. When barred from attending.**

Any person denied access to a public meeting may commence suit to compel compliance with, or enjoin violations of, the Open Meetings Act. Utah Code Ann. § 52-4-303(3)(a).

##### **3. To set aside decision.**

Any final action taken in violation of the Open Meetings Act is “voidable” rather than automatically void. Utah Code Ann. § 52-4-302(1)(a). In other words, a court may hold that the action is void, but the action is not void until the court so holds.

##### **4. For ruling on future meetings.**

Any person denied a right under the Open Meetings Act may bring an action to compel compliance with the Act, to enjoin an agency’s violation of the Act, or to determine the applicability of the Act to discussions or decisions by a public body. Utah Code Ann. § 52-4-303(3).

**B. How to start.****1. Where to ask for ruling.****a. Administrative forum.**

The Open Meetings Act does not provide for an administrative forum.

**(1). Agency procedure for challenge.**

Not applicable.

**(2). Commission or independent agency.**

Not applicable.

**b. State attorney general.**

The Open Meetings Act states that the “attorney general and county attorneys of the state shall enforce this chapter.” Utah Code Ann. § 52-4-303(1). Historically, however, enforcement of the Open Meetings Act has been an extremely low priority of the Attorney General’s Office and of the County Attorneys. To date, the Attorney General has not brought a single enforcement action.

**c. Court.**

Any person denied access to a meeting in violation of the Open Meetings Act may commence suit “to compel compliance with or enjoin violations of this chapter or to determine its applicability to discussions or decisions of a public body.” Utah Code Ann. § 52-4-303(3).

**2. Applicable time limits.**

Not applicable.

**3. Contents of request for ruling.**

Not applicable.

**4. How long should you wait for a response?**

Not applicable.

**5. Are subsequent or concurrent measures (formal or informal) available?**

Not applicable.

**C. Court review of administrative decision.****1. Who may sue?**

The Open Meetings Act states that any “person denied any right under this chapter may commence suit . . . to compel compliance with or enjoin violations of this chapter or to determine its applicability to discussions or decisions of a public body.” Utah Code Ann. § 52-4-303(3).

**2. Will the court give priority to the pleading?**

There is no provision under Utah law which gives open meetings issues any priority on the courts’ dockets. Expedited relief is available, however, under the Utah Rules of Civil Procedure. *See* Utah R. Civ. P. 65A.

**3. Pro se possibility, advisability.**

Although it is certainly possible for individuals to represent themselves in a *pro se* lawsuit challenging a violation of the Open Meetings Act, this is not always advisable. The laws relating to open meetings in Utah are somewhat complex, and it is usually beneficial to seek legal advice.

**4. What issues will the court address?****a. Open the meeting.**

A court may compel compliance with the Open Meetings Act. Utah Code Ann. § 52-4-303(a).

**b. Invalidate the decision.**

A court *may* void final action taken in an illegally closed meeting. Utah Code Ann. § 52-4-302(1)(a).

The violation of a temporary restraining order does not void an action taken at an open meeting, unless the trial court abused its discretion. *Ward v. Richfield City*, 798 P.2d 757, 759-60 (Utah 1990). In *Ward*, the petitioner obtained a temporary restraining order to stop the city council from conducting further hearings regarding his dismissal as police chief. The council violated the temporary restraining order by proceeding with a public hearing on the matter and by ratifying Ward’s termination. The Utah Supreme Court held that the appropriate remedy for violation of an injunction rests in the trial court’s sound discretion, and that the trial court’s decision *not* to void the city council’s action was not an abuse of discretion. *Id.*

**c. Order future meetings open.**

A court may enjoin violations of the Open Meetings Act. Utah Code Ann. § 52-4-303(3)(a).

**5. Pleading format.**

The complaint filed with the district court should be captioned as required by Rule 10 of the Utah Rules of Civil Procedure. (For example, the caption should include the plaintiff’s name, address, and telephone number or the name, address, and telephone number of the plaintiff’s attorney; should indicate the names of the plaintiffs and the defendant (i.e., the agency or the public body being sued); and should indicate that the pleading is a complaint). The allegations in the complaint should, at a minimum, include the following:

- (1) the name of the person or organization challenging the violation of the Open Meetings Act;
- (2) the name of the public body that allegedly violated or proposes to violate the Open Meetings Act;
- (3) a statement of the court’s jurisdiction over the matter (e.g., the meeting occurred in the county over which the court has jurisdiction);
- (4) the date, time, and location of the challenged meeting;
- (5) the members of the public body who attended the meeting, if known;
- (6) the matters discussed at the meeting, if known;
- (7) the reasons, if any, given for the public body’s closure of the meeting;
- (8) the facts indicating that the entity holding the meeting is a “public body” as defined in the Open Meetings Act;
- (9) the facts indicating that the meeting to which the plaintiff was denied access was a “meeting” as defined by the Open Meetings Act;
- (10) the facts indicating that there was a quorum of the public body present at the meeting;
- (11) a statement that the meeting was not a “chance meeting” or “social meeting”;
- (12) a statement, if applicable, that the public body failed to approve the closing of the meeting by a two-thirds vote of the members of the public body;
- (13) a statement that the topics discussed at the meeting were not included in the list of exempt topics set forth in Utah Code section 52-4-205;
- (14) a statement, if applicable, that the public body failed to give adequate notice of the meeting;
- (15) a statement, if applicable, that the public body failed to keep adequate minutes of the meeting;

(16) a statement of the relief sought from the court (e.g., an order declaring that action taken at the meeting is void; an order to compel compliance with, or to enjoin violations of, the Open Meetings Act; or a declaratory judgment on the applicability of the Open Meetings Act to the discussions or decisions of the public body at the meeting);

(17) a statement of the plaintiff's efforts to obtain access to the meetings; and

(18) a request for reasonable attorneys' fees and court costs and such other just and equitable relief as the court deems appropriate.

## 6. Time limit for filing suit.

*Suits to void final action.* A suit to void a final agency action taken at a closed meeting "shall be commenced within 90 days after the date of the action," unless the final agency action concerns "issuance of bonds, notes, or other evidences of indebtedness," in which case the suit "shall be commenced within 30 days after the date of the action." Utah Code Ann. § 52-4-302(2), (3). A suit to void final action that is brought after these statutory periods have expired will be barred.

*Other actions.* Because the 90- and 30-day limitations periods expressly govern suits to void *final actions* taken in closed sessions, these time periods presumably do *not* apply to other enforcement actions such as suits brought challenging the legality of a *discussion* held in closed session.

*Exhaustion of remedies.* It appears that plaintiffs need not exhaust administrative remedies before filing an action in district court. *Cf. id.* § 63-46b-14(2) (requiring exhaustion of all administrative remedies in most cases).

Under the Utah Rules of Civil Procedure, a defendant has 20 days to answer a complaint. Utah R. Civ. P. 12(a).

## 7. What court.

Utah Code sections 52-4-303(3) states that suits to challenge violations of the Open Meetings Act or to seek an injunction of a violation of or a declaratory judgment about the applicability of the Act shall be brought in "a court of competent jurisdiction." Generally, this refers to a district court in the county in which the alleged violation occurred.

## 8. Judicial remedies available.

A court may (a) compel compliance with the Open Meetings Act; (b) enjoin an agency's violation of the Act; (c) determine the Act's applicability to a public body's discussions or decisions; or (d) order the public disclosure of a tape recording or minutes containing information about a meeting, or a portion thereof, that was closed illegally. Utah Code Ann. §§ 52-4-303(3), -304(2)(b).

## 9. Availability of court costs and attorneys' fees.

The Open Meetings Act allows a court to "award reasonable attorney fees and court costs to a successful plaintiff." Utah Code Ann. § 52-4-303(4). The award of fees and costs is discretionary, not mandatory.

## 10. Fines.

The Open Meetings Act does not establish any fines or penalties for violating the chapter.

### D. Appealing initial court decisions.

#### 1. Appeal routes.

The Utah Supreme Court has jurisdiction to review all "orders, judgments, and decrees of any court of record over which the [Utah] Court of Appeals does not have original appellate jurisdiction." Utah Code Ann. § 78A-3-102(3)(j). Although the Utah Court of Appeals has jurisdiction to review the "final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies," except in the case of a few designated agencies, it would appear that a challenge under the Open Meetings Act is not a "final order" or "decree" of a state agency. *See id.* § 78A-4-103(2)(a). It seems, therefore, that appellate jurisdiction rests initially with the Utah Supreme Court rather than with the Utah Court of Appeals. However, the Utah Supreme Court may transfer to the Court of Appeals most matters over which the Utah Supreme Court has original appellate jurisdiction, including challenges under the Open Meetings Act. *See id.* § 78A-4-103(2)(j) ; *see also generally, e.g., Poll v. South Weber City*, No. 20040888-CA, 2005 WL 1177231 (Utah Ct. App. May 19, 2005).

#### 2. Time limits for filing appeals.

An appeal must be filed with the appellate court within 30 days after entry of the district court's judgment or order. *See* Utah R. App. P. 4(a).

#### 3. Contact of interested amici.

If you are filing an appeal with an appellate court, you should contact other interested groups who may want to file *amicus* briefs or assist with the legal research needed to support your arguments to the court. In Utah, the following groups have been actively involved in open meetings issues: (a) the Utah Headliners Chapter of the Society of Professional Journalists and local media representatives; (b) the Reporters Committee for Freedom of the Press; (c) the American Civil Liberties Union; and (d) public interest groups such as Utah Common Cause, Utah Issues, Utah Legal Services, and Utah League of Women Voters.

## V. ASSERTING A RIGHT TO COMMENT.

There is no provision in Utah law that provides an affirmative right to comment.

## Statute

### Open Records

#### Utah Code

#### Title 63. State Affairs in General

#### Government Records Access and Management Act

#### General Provisions

#### § 63G-2-101. Title

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

#### § 63G-2-102. Legislative intent

(1) In enacting this act, the Legislature recognizes two constitutional rights:

- (a) the public’s right of access to information concerning the conduct of the public’s business; and
- (b) the right of privacy in relation to personal data gathered by governmental entities.

(2) The Legislature also recognizes a public policy interest in allowing a government to restrict access to certain records, as specified in this chapter, for the public good.

(3) It is the intent of the Legislature to:

- (a) promote the public’s right of easy and reasonable access to unrestricted public records;
- (b) specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public’s interest in access;
- (c) prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided in this chapter;
- (d) provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and which are consistent with nationwide standards of information practices;
- (e) favor public access when, in the application of this act, countervailing interests are of equal weight; and
- (f) establish fair and reasonable records management practices.

#### § 63G-2-103. Definitions

As used in this chapter:

(1) “Audit” means:

- (a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or
- (b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.

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

- (a) the time and general nature of police, fire, and paramedic calls made to the agency; and
- (b) any arrests or jail bookings made by the agency.

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

(4)

(a) “Computer program” means:

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

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

(b) “Computer program” does not mean:

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

(5)

(a) “Contractor” means:

- (i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or
- (ii) any private, nonprofit organization that receives funds from a governmental entity.

(b) “Contractor” does not mean a private provider.

(6) “Controlled record” means a record containing data on individuals that is controlled as provided by Section 63G-2-304.

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

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

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

- (a) commonly used or intended for the purpose of producing an explosion; and
- (b) that contains oxidizing or combustible units or other ingredients in proportions, quantities, or packing so that:
  - (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases; and
  - (ii) the resultant gaseous pressures are capable of:
    - (A) producing destructive effects on contiguous objects;
    - or
    - (B) causing death or serious bodily injury.

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

(11)

(a) “Governmental entity” means:

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

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

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

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

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

(b) “Governmental entity” also means every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public’s business.

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

(13) “Individual” means a human being.

(14)

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

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

(ii) names of victims;

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

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

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

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

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

(15) “Legislative body” means the Legislature.

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

(17) “Person” means:

(a) an individual;

(b) a nonprofit or profit corporation;

(c) a partnership;

(d) a sole proprietorship;

(e) other type of business organization; or

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

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

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

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

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

(22)

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

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

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

(b) “Record” does not mean:

(i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity in the employee’s or officer’s private capacity;

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

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

(iv) material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;

(v) proprietary software;

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

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

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

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

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

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

(A) a member of the judiciary;

(B) an administrative law judge;

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

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

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

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

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

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

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

(25) “Records officer” means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

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

(27) “Sponsored research” means research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget:

(a) conducted:

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

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

(b) funded or otherwise supported by an external:

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

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

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

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

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

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

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

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

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

§ 63G-2-106. *Records of security measures*

The records of a governmental entity or political subdivision regarding security measures designed for the protection of persons or property, public or private, are not subject to this chapter. These records include:

- (1) security plans;
- (2) security codes and combinations, and passwords;
- (3) passes and keys;
- (4) security procedures; and
- (5) building and public works designs, to the extent that the records or information relate to the ongoing security measures of a public entity.

§ 63G-2-107. *Disclosure of records subject to federal law*

Notwithstanding the provisions of Subsections 63G-2-201(6)(a) and (b), this chapter does not apply to a record containing protected health information as defined in 45 C.F.R., Part 164, Standards for Privacy of Individually Identifiable Health Information, if the record is:

- (1) controlled or maintained by a governmental entity; and
- (2) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information.

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

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

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

(3) The following records are not public:

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

(b) a record to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

(4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or 63G-2-305 may be classified private, controlled, or protected.

(5)

(a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section 63G-2-202, 63G-2-206, or 63G-2-303.

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

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

(ii) the interests favoring access outweighs the interest favoring restriction of access.

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

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

(A) is mutually beneficial to:

- (I) the subject of the record;
- (II) the governmental entity; and
- (III) the public; and

(B) serves a public purpose related to:

- (I) public safety; or
- (II) consumer protection; and

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

(6)

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

(b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

(7) A governmental entity shall provide a person with a certified copy of a record if:

- (a) the person requesting the record has a right to inspect it;
- (b) the person identifies the record with reasonable specificity; and
- (c) the person pays the lawful fees.

(8)

(a) In response to a request, a governmental entity is not required to:

(i) create a record;

(ii) compile, format, manipulate, package, summarize, or tailor information;

(iii) provide a record in a particular format, medium, or program not currently maintained by the governmental entity;

(iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or

(v) fill a person's records request if:

(A) the record requested is accessible in the identical physical form and content in a public publication or product produced by the governmental entity receiving the request;

(B) the governmental entity provides the person requesting the record with the public publication or product; and

(C) the governmental entity specifies where the record can be found in the public publication or product.

(b) Upon request, a governmental entity may provide a record in a particular form under Subsection (8)(a)(ii) or (iii) if:

(i) the governmental entity determines it is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and

(ii) the requester agrees to pay the governmental entity for providing the record in the requested form in accordance with Section 63G-2-203.

(9)

(a) A governmental entity may allow a person requesting more than 50 pages of records to copy the records if:

(i) the records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and

(ii) the governmental entity provides reasonable safeguards to protect the public from the potential for loss of a public record.

(b) When the requirements of Subsection (9)(a) are met, the governmental entity may:

(i) provide the requester with the facilities for copying the requested records and require that the requester make the copies; or

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

(10)

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

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

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

(12) Subject to the requirements of Subsection (8), a governmental entity shall provide access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

(a) the person making the request requests or states a preference for an electronic copy;

(b) the governmental entity currently maintains the record in an electronic format that is reproducible and may be provided without reformatting or conversion; and

(c) the electronic copy of the record:

(i) does not disclose other records that are exempt from disclosure; or

(ii) may be segregated to protect private, protected, or controlled information from disclosure without the undue expenditure of public resources or funds.

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

(1) Upon request, and except as provided in Subsection (11)(a), a governmental entity shall disclose a private record to:

(a) the subject of the record;

(b) the parent or legal guardian of an unemancipated minor who is the subject of the record;

(c) the legal guardian of a legally incapacitated individual who is the subject of the record;

(d) any other individual who:

(i) has a power of attorney from the subject of the record;

(ii) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or

(iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a health care provider, as defined in Section 26-33a-102, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

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

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

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

(2)

(a) Upon request, a governmental entity shall disclose a controlled record to:

(i) a physician, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:

(A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and

(B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

(ii) any person to whom the record must be disclosed pursuant to:

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

(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental entity shall disclose a protected record to:

(a) the person who submitted the record;

(b) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;

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

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

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

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

(5) A governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, another state, the United States, or a foreign government only as provided by Section 63G-2-206.

(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

(a) the record deals with a matter in controversy over which the court has jurisdiction;

(b) the court has considered the merits of the request for access to the record;

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

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

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

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

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

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

(8)

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

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

(ii) determines that:

(A) the proposed research is bona fide; and

(B) the value of the research outweighs the infringement upon personal privacy;

(iii)

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

(B) requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from:

(A) disclosing the record in individually identifiable form, except as provided in Subsection (8)(b); or

(B) using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of the researcher's understanding of and agreement to the conditions of this Subsection (8) and the researcher's understanding that violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution under Section 63G-2-801.

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

(c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).

(9)

(a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity may disclose to persons other than those specified in this section records that are:

(i) private under Section 63G-2-302; or

(ii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(b) Under Subsection 63G-2-403(11)(b), the records committee may require the disclosure to persons other than those specified in this section of records that are:

- (i) private under Section 63G-2-302;
- (ii) controlled under Section 63G-2-304; or

(iii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(c) Under Subsection 63G-2-404(8), the court may require the disclosure of records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected under Section 63G-2-305 to persons other than those specified in this section.

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

(11)

(a) A private record described in Subsection 63G-2-302(2)(f) may only be disclosed as provided in Subsection (1)(e).

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

(12)

(a) A private, protected, or controlled record described in Section 62A-16-301 shall be disclosed as required under:

- (i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and
- (ii) Subsection 62A-16-302(1).

(b) A record disclosed under Subsection (12)(a) shall retain its character as private, protected, or controlled.

*§ 63G-2-203. Fees*

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

(2)

(a) When a governmental entity compiles a record in a form other than that normally maintained by the governmental entity, the actual costs under this section may include the following:

- (i) the cost of staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;
- (ii) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request; and

(iii) in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users, and the administrative costs as set forth in Subsections (2)(a)(i) and (ii).

(b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request.

(c) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first quarter hour of staff time.

(3)

(a) Fees shall be established as provided in this Subsection (3).

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

- (i) shall establish the fees defined in Subsection (2), or other actual costs associated with this section through the budget process; and
- (ii) may use the procedures of Section 63J-1-504 to set fees until the Legislature establishes fees through the budget process.

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

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

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

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

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

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

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

- (a) reviewing a record to determine whether it is subject to disclosure, except as permitted by Subsection (2)(a)(ii); or
- (b) inspecting a record.

(6)

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

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

(7)

(a) All fees received under this section by a governmental entity subject to Subsection (3)(b) shall be retained by the governmental entity as a dedicated credit.

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

(8)

(a) A governmental entity may require payment of past fees and future estimated fees before beginning to process a request if:

- (i) fees are expected to exceed \$50; or
- (ii) the requester has not paid fees from previous requests.

(b) Any prepaid amount in excess of fees due shall be returned to the requester.

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

(10)

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

(b) The lieutenant governor shall:

- (i) after consultation with county clerks, establish uniform fees for voter registration and voter history records that meet the requirements of this section; and
- (ii) obtain legislative approval of those fees by following the procedures and requirements of Section 63J-1-504.

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

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

- (a) the person's name, mailing address, and daytime telephone number, if available; and
- (b) a description of the record requested that identifies the record with reasonable specificity.

(2)

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

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

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

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

(d) A governmental entity may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying where and to

whom requests for access shall be directed.

(3) After receiving a request for a record, a governmental entity shall:

(a) review each request that seeks an expedited response and notify, within five business days after receiving the request, each requester that has not demonstrated that their record request benefits the public rather than the person that their response will not be expedited; and

(b) as soon as reasonably possible, but no later than 10 business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person:

(i) approve the request and provide a copy of the record;

(ii) deny the request in accordance with the procedures and requirements of Section 63G-2-205;

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

(iv) notify the requester that because of one of the extraordinary circumstances listed in Subsection (5), it cannot immediately approve or deny the request, and include with the notice:

(A) a description of the circumstances that constitute the extraordinary circumstances; and

(B) the date when the records will be available, consistent with the requirements of Subsection (6).

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

(5) The following circumstances constitute “extraordinary circumstances” that allow a governmental entity to delay approval or denial by an additional period of time as specified in Subsection (6) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (3):

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

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

(c)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) for any person that does not establish a right to an expedited response as authorized by Subsection (3)(a), 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.

#### § 63G-2-205. Denials

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

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

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

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

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

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

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

#### § 63G-2-206. Sharing records

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

(a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;

(b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;

(c) is authorized by state statute to conduct an audit and the record is needed for that purpose;

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

(e)

(i) is:

- (A) the Legislature;
- (B) a legislative committee;
- (C) a member of the Legislature; or

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

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

- (A) the preparation or review of a legislative proposal or legislation;
- (B) appropriations; or
- (C) an investigation or review conducted by the Legislature or a legislative committee.

(2)

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

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

(b) A governmental entity may provide a private, controlled, or protected record or record series to a contractor or a private provider according to the requirements of Subsection (6)(b).

(3)

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

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

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

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

- (a) inform the recipient of the record's classification and the accompanying restrictions on access; and
- (b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

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

(6)

(a) Subject to Subsections (6)(b) and (c), an entity receiving a record under this section is subject to the same restrictions on disclosure of the record as the originating entity.

(b) A contractor or a private provider may receive information under this section only if:

- (i) the contractor or private provider's use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series;
- (ii) the record or record series it requests:
  - (A) is necessary for the performance of a contract with a governmental entity;

(B) will only be used for the performance of the contract with the governmental entity;

(C) will not be disclosed to any other person; and

(D) will not be used for advertising or solicitation purposes; and

(iii) the contractor or private provider gives written assurance to the governmental entity that is providing the record or record series that it will adhere to the restrictions of this Subsection (6)(b).

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

(7) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.

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

(a) records held by the Division of Oil, Gas, and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining; and

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

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

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

(1) Subpoenas and other methods of discovery under the state or federal statutes or rules of civil, criminal, administrative, or legislative procedure are not written requests under Section 63G-2-204.

(2)

(a)

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

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

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

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

- (i) records through the procedures set forth in this chapter; or
- (ii) medical records discoverable under state or federal court rules as authorized by Subsection 63G-2-302(3).

§ 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)(i).
- (3) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b), Section 63G-2-302, 63G-2-304, or 63G-2-305:
- (a) administrative staff manuals, instructions to staff, and statements of policy;
  - (b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;
  - (c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;
  - (d) contracts entered into by a governmental entity;
  - (e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;
  - (f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63G-2-305(35);
  - (g) chronological logs and initial contact reports;
  - (h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;
  - (i) empirical data contained in drafts if:
    - (i) the empirical data is not reasonably available to the requester elsewhere in similar form; and
    - (ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;
  - (j) drafts that are circulated to anyone other than:
    - (i) a governmental entity;
    - (ii) a political subdivision;
    - (iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;
    - (iv) a government-managed corporation; or
    - (v) a contractor or private provider;
  - (k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;
  - (l) original data in a computer program if the governmental entity chooses not to disclose the program;
  - (m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
  - (n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;
  - (o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:
    - (i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and
    - (ii) the charges on which the disciplinary action was based were sustained;
  - (p) records maintained by the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that evidence mineral production on government lands;
  - (q) final audit reports;
  - (r) occupational and professional licenses;
  - (s) business licenses; and
  - (t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.
- (4) The list of public records in this section is not exhaustive and should not be used to limit access to records.
- § 63G-2-302. Private records*
- (1) The following records are private:
- (a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;
  - (b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;
  - (c) records of publicly funded libraries that when examined alone or with other records identify a patron;
  - (d) records received by or generated by or for:
    - (i) the Independent Legislative Ethics Commission, except for:
      - (A) the commission's summary data report that is required under legislative rule; and
      - (B) any other document that is classified as public under legislative rule; or
    - (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;
  - (e) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:
    - (i) if prior to the meeting, the chair of the committee determines release of the records:
      - (A) reasonably could be expected to interfere with the investigation undertaken by the committee; or
      - (B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and
    - (ii) after the meeting, if the meeting was closed to the public;
  - (f) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose

that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions;

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

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

(i) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number;

(j) a record that:

- (i) contains information about an individual;
- (ii) is voluntarily provided by the individual; and
- (iii) goes into an electronic database that:

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

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

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

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

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

(m) 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

(n) 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)(o), or private under Subsection (1)(b);

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

- (i) records described in Subsection 63G-2-301(2);
- (ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or
- (iii) records that must be disclosed in accordance with another statute;

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

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it; 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.

§ 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;

Code;

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

(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), an at-risk government employee may file a written application that:

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

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

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

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

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

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

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

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

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

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

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

record if:

- (a) the employee or former employee gives written consent;
- (b) a court orders release of the records; or
- (c) the government agency receives a certified death certificate for the employee or former employee.

(5)

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

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

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

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

§ 63G-2-304. *Controlled records*

A record is controlled if:

- (1) the record contains medical, psychiatric, or psychological data about an individual;
- (2) the governmental entity reasonably believes that:

(a) releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual; or

(b) releasing the information would constitute a violation of normal professional practice and medical ethics; and

- (3) the governmental entity has properly classified the record.

§ 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, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

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

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

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

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

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

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

(16) records prepared by or on behalf of a governmental entity solely in

anticipation of litigation that are not available under the rules of discovery;

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

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78B-1-137;

(19)

(a)

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

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

(b)

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

(A) members of a legislative body;

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

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

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

(20)

(a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

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

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

(22) drafts, unless otherwise classified as public;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

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

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

(40)

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

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

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

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

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

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

(41)

(a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular

legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

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

- (a) a production facility; or
- (b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

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

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

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

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

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program 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:

- (i) governmental property;
- (ii) governmental programs; or

(iii) the property of a private person who provides the Division of Homeland Security information;

(49) records of the Department of Agriculture and Food relating to the National Animal Identification System or any other program that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and Quarantine;

(50) as provided in Section 26-39-501:

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

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

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

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

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

- (i) the nature of the law, ordinance, rule, or order; and
- (ii) the individual complying with the law, ordinance, rule, or order;

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

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

(b) conducted using animals;

(53) an initial proposal under Title 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;

(58) 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.

#### § 63G-2-306. Procedure to determine classification

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

(2) Nothing in Subsection 63G-2-302(2), Section 63G-2-304, or 63G-2-305 requires a governmental entity to classify a record as private, controlled, or protected.

#### § 63G-2-307. Duty to evaluate records and make designations and classifications

(1) A governmental entity shall:

(a) evaluate all record series that it uses or creates;

(b) designate those record series as provided by this chapter and Title 63A, Chapter 12, Part 1, Archives and Records Service; and

(c) report the designations of its record series to the state archives.

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

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

#### § 63G-2-308. Segregation of records

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

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

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

#### § 63G-2-309. Confidentiality claims

(1)

(a)

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

(A) a written claim of business confidentiality; and

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

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

- (A) a person;
- (B) a federal governmental entity;
- (C) a state governmental entity; or
- (D) a local governmental entity.

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

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

- (A) Subsection 63G-2-305(1);
- (B) Subsection 63G-2-305(2);
- (C) Subsection 63G-2-305(40)(a)(ii);
- (D) Subsection 63G-2-305(40)(a)(vi); or

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

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

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

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

*§ 63G-2-310. Records made public after 75 years*

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

(2) Subsection (1) does not apply to records of unclaimed property held by the state treasurer in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

*§ 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).

(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 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 the interests favoring access outweigh the interests favoring restriction of access.

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

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

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

*§ 63G-2-402. Option for appealing a denial*

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

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

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

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

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

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

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

(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. 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 intervenor's position shall be filed with the request for intervention.
  - (c) The person seeking intervention shall provide copies of the statement described in Subsection (6)(b) to all parties to the proceedings before the records committee.
- (7) The records committee shall hold a hearing within the period of time described in Subsection (4).
- (8) At the hearing, the records committee shall allow the parties to testify, present evidence, and comment on the issues. The records committee may allow other interested persons to comment on the issues.
- (9)
- (a) The records committee may review the disputed records. However, if the committee is weighing the various interests under Subsection (11), the committee must review the disputed records. The review shall be in camera.
  - (b) Members of the records committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by this chapter.
- (10)
- (a) Discovery is prohibited, but the records committee may issue subpoenas or other orders to compel production of necessary evidence.
  - (b) 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 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) 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. 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;
        - (II) the Legislative Management Committee for legislative branch entities; and
        - (III) the Judicial Council for judicial branch agencies entities.

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

§ 63G-2-404. *Judicial review*

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

(7) The court shall:

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

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

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

(8)

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

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

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

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

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

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

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

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

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

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

(4)

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

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

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

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

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

(b) the state auditor or the auditor's designee;

(c) the director of the Division of State History or the director's designee;

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

(e) one citizen member;

(f) one elected official representing political subdivisions; and

(g) one individual representing the news media.

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

(3)

(a) Except as required by Subsection (3)(b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

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

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

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

§ 63G-2-502. *State Records Committee—Duties*

(1) The records committee shall:

(a) meet at least once every three months;

(b) review and approve schedules for the retention and disposal of records;

(c) hear appeals from determinations of access as provided by Section 63G-2-403; and

(d) appoint a chairman from among its members.

(2) The records committee may:

(a) make rules to govern its own proceedings as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) by order, after notice and hearing, reassign classification and designation for any record series by a governmental entity if the governmental entity's classification or designation is inconsistent with this chapter.

(3) The records committee shall annually appoint an executive secretary to the records committee. The executive secretary may not serve as a voting member of the committee.

(4) Five members of the records committee are a quorum for the transaction of business.

(5) The state archives shall provide staff and support services for the records committee.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) If the records committee reassigns the classification or designation of a record or record series under Subsection (2)(b), any affected governmental entity or any other interested person may appeal the reclassification or redesignation to the district court. The district court shall hear the matter de novo.

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

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

(1)

(a) Each governmental entity shall file with the state archivist a statement explaining the purposes for which a record series that is designated as private or controlled is collected and used by that governmental entity.

(b) The statement filed under Subsection (1)(a) is a public record.

(2)

(a) A governmental entity shall provide notice of the following to a person that is asked to furnish information that could be classified as a private or controlled record:

(i) the reasons the person is asked to furnish the information;

(ii) the intended uses of the information;

(iii) the consequences for refusing to provide the information; and

(iv) the classes of persons and the governmental entities that currently:

(A) share the information with the governmental entity; or

(B) receive the information from the governmental entity on a regular or contractual basis.

(b) The notice shall be:

(i) posted in a prominent place at all locations where the governmental entity collects the information; or

(ii) included as part of the documents or forms that are used by the governmental entity to collect the information.

(3) Upon request, each governmental entity shall explain to a person:

(a) the reasons the person is asked to furnish information that could be classified as a private or controlled record;

(b) the intended uses of the information referred to in Subsection (3)(a);

(c) the consequences for refusing to provide the information referred to in Subsection (3)(a); and

(d) the reasons and circumstances under which the information referred to in Subsection (3)(a) may be shared with or provided to other persons or governmental entities.

(4) A governmental entity may use private or controlled records only for those purposes:

(a) given in the statement filed with the state archivist under Subsection (1); or

(b) for which another governmental entity may use the record under Section 63G-2-206.

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

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

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

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

(2)

(a) Subject to Subsection (8), an individual may contest the accuracy or completeness of any public, or private, or protected record concerning him by requesting the governmental entity to amend the record. However, this section does not affect the right of access to private or protected records.

(b) The request shall contain the following information:

(i) the requester's name, mailing address, and daytime telephone number; and

(ii) a brief statement explaining why the governmental entity should amend the record.

(3) The governmental entity shall issue an order either approving or denying the request to amend as provided in Title 63G, Chapter 4, Administrative Procedures Act, or, if the act does not apply, no later than 30 days after receipt of the request.

(4) If the governmental entity approves the request, it shall correct all of its records that contain the same incorrect information as soon as practical. A governmental entity may not disclose the record until it has amended it.

(5) If the governmental entity denies the request, it shall:

(a) inform the requester in writing; and

(b) provide a brief statement giving its reasons for denying the request.

(6)

(a) If a governmental entity denies a request to amend a record, the requester may submit a written statement contesting the information in the record.

(b) The governmental entity shall:

(i) file the requester's statement with the disputed record if the record is in a form such that the statement can accompany the record or make the statement accessible if the record is not in a form such that the statement can accompany the record; and

(ii) disclose the requester's statement along with the information in the record whenever the governmental entity discloses the disputed information.

(7) The requester may appeal the denial of the request to amend a record pursuant to the Administrative Procedures Act or, if that act does not apply, to district court.

(8) This section does not apply to records relating to title to real or personal property, medical records, judicial case files, or any other records that the governmental entity determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

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

(1)

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

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

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

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

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

(1)

(a) Each political subdivision may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention, and amendment of records.

(b) The ordinance or policy shall comply with the criteria set forth in this section.

(c) If any political subdivision does not adopt and maintain an ordinance or policy, then that political subdivision is subject to this chapter.

(d) Notwithstanding the adoption of an ordinance or policy, each political subdivision is subject to Parts 1 and 3, and Sections 63A-12-105, 63A-12-107, 63G-2-201, 63G-2-202, 63G-2-205, 63G-2-206, 63G-2-601, and 63G-2-602.

(e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed with the state archives no later than 30 days after its effective date.

(f) The political subdivision shall also report to the state archives all retention schedules, and all designations and classifications applied to record series maintained by the political subdivision.

(g) The report required by Subsection (1)(f) is notification to state archives of the political subdivision's retention schedules, designations, and classifications. The report is not subject to approval by state archives. If state archives determines that a different retention schedule is needed for state purposes, state archives shall notify the political subdivision of the state's retention schedule for the records and shall maintain the records if requested to do so under Subsection 63A-12-105(2).

(2) Each ordinance or policy relating to information practices shall:

(a) provide standards for the classification and designation of the records of the political subdivision as public, private, controlled, or protected in accordance with Part 3 of this chapter;

(b) require the classification of the records of the political subdivision in accordance with those standards;

(c) provide guidelines for establishment of fees in accordance with Section 63G-2-203; and

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

(3)

(a) Each ordinance or policy shall establish access criteria, procedures, and response times for requests to inspect, obtain, or amend records of the political subdivision, and time limits for appeals consistent with this chapter.

(b) In establishing response times for access requests and time limits for appeals, the political subdivision may establish reasonable time frames different than those set out in Section 63G-2-204 and Part 4 of this chapter if it determines that the resources of the political subdivision are insufficient to meet the requirements of those sections.

(4)

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

(b) The policy or ordinance shall provide for:

(i)

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

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

(ii) the designation of a person as the chief administrative officer for purposes of determining appeals under Section 63G-2-401 of the governmental entity's determination.

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

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

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

#### § 63G-2-702. *Applicability to the judiciary*

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

(2)

(a) The judiciary is not subject to Part 4, Appeals, except as provided in Subsection (5).

(b) The judiciary is not subject to Parts 5, State Records Committee, and 6, Collection of Information and Accuracy of Records.

(c) The judiciary is subject to only the following sections in Part 9, Archives and Records Service: Sections 63A-12-105 and 63A-12-106.

(3) The Judicial Council, the Administrative Office of the Courts, the courts, and other administrative units in the judicial branch shall designate and classify their records in accordance with Sections 63G-2-301 through 63G-2-305.

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

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

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

(c) provide standards for the management and retention of judicial records substantially consistent with Section 63A-12-103.

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

(6) Upon request, the state archivist shall:

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

(b) as required by the judiciary, provide program services similar to those available to the executive and legislative branches of government as provided in this chapter and Title 63A, Chapter 12, Part 1, Archives and Records Service.

#### § 63G-2-703. *Applicability to the Legislature*

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

(2)

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

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

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

(b) may establish an appellate board to hear appeals from denials of access.

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

(5) Upon request, the state archivist shall:

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

(b) as required by the Legislature, provide program services similar to those available to the executive branch of government, as provided in this chapter and Title 63A, Chapter 12, Part 1, Archives and Records Service.

#### § 63G-2-801. *Criminal penalties*

(1)

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

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

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

(2)

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

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

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

#### § 63G-2-802. Injunction—Attorney fees

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

(2)

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

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

(i) the public benefit derived from the case;

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

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

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

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

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

(5) Claims for attorney fees as provided in this section or for damages are subject to Title 63G, Chapter 7, Governmental Immunity Act of Utah.

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

(b)

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

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

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

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

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

### Open Meetings

#### § 52-4-101. Title

This chapter is known as the "Open and Public Meetings Act."

#### § 52-4-102. Declaration of public policy

(1) The Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business.

(2) It is the intent of the Legislature that the state, its agencies, and its political subdivisions:

(a) take their actions openly; and

(b) conduct their deliberations openly.

#### § 52-4-103. Definitions

As used in this chapter:

(1) "Anchor location" means the physical location from which:

(a) an electronic meeting originates; or

(b) the participants are connected.

(2) "Convening" means the calling of a meeting of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.

(3) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.

(4)

(a) "Meeting" means the convening of a public body, with a quorum present, including a workshop or an executive session whether the meeting is held in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power.

(b) "Meeting" does not mean:

(i) a chance meeting;

(ii) a social meeting; or

(iii) the convening of a public body that has both legislative and executive responsibilities where no public funds are appropriated for expenditure during the time the public body is convened and:

(A) the public body is convened solely for the discussion or implementation of administrative or operational matters for which no formal action by the public body is required; or

(B) the public body is convened solely for the discussion or implementation of administrative or operational matters that would not come before the public body for discussion or action.

(5) "Monitor" means to hear or observe, live, by audio or video equipment, all of the public statements of each member of the public body who is participating in a meeting.

(6) "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the

public body can hear or observe the communication.

(7)

(a) “Public body” means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

(i) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

(ii) consists of two or more persons;

(iii) expends, disburses, or is supported in whole or in part by tax revenue; and

(iv) is vested with the authority to make decisions regarding the public’s business.

(b) “Public body” does not include a:

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

(ii) conference committee, rules committee, or sifting committee of the Legislature.

(8) “Public statement” means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

(9)

(a) “Quorum” means a simple majority of the membership of a public body, unless otherwise defined by applicable law.

(b) “Quorum” does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power.

(10) “Recording” means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.

#### § 52-4-104. Training

The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of this chapter.

#### § 52-4-201. Meetings open to the public—Exceptions

(1) A meeting is open to the public unless closed under Sections 52-4-204, 52-4-205, and 52-4-206.

(2)

(a) A meeting that is open to the public includes a workshop or an executive session of a public body in which a quorum is present, unless closed in accordance with this chapter.

(b) A workshop or an executive session of a public body in which a quorum is present that is held on the same day as a regularly scheduled public meeting of the public body may only be held at the location where the public body is holding the regularly scheduled public meeting unless:

(i) the workshop or executive session is held at the location where the public body holds its regularly scheduled public meetings but, for that day, the regularly scheduled public meeting is being held at different location;

(ii) any of the meetings held on the same day is a site visit or a traveling tour and, in accordance with this chapter, public notice is given;

(iii) the workshop or executive session is an electronic meeting conducted according to the requirements of Section 52-4-207; or

(iv) it is not practicable to conduct the workshop or executive session at the regular location of the public body’s open meetings due to an emergency or extraordinary circumstances.

#### § 52-4-202. Public notice of meetings—Emergency meetings

(1) A public body shall give not less than 24 hours public notice of each meeting including the meeting:

(a) agenda;

(b) date;

(c) time; and

(d) place.

(2)

(a) In addition to the requirements under Subsection (1), a public body which holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once each year of its annual meeting schedule as provided in this section.

(b) The public notice under Subsection (2)(a) shall specify the date, time, and place of the scheduled meetings.

(3)

(a) Public notice shall be satisfied by:

(i) posting written notice:

(A) at the principal office of the public body, or if no principal office exists, at the building where the meeting is to be held; and

(B) beginning October 1, 2008 and except as provided in Subsection (3)(b), on the Utah Public Notice Website created under Section 63F-1-701; and

(ii) providing notice to:

(A) at least one newspaper of general circulation within the geographic jurisdiction of the public body; or

(B) a local media correspondent.

(b) A public body of a municipality under Title 10, Utah Municipal Code, a local district under Title 17B, Limited Purpose Local Government Entities—Local Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act, is encouraged, but not required, to post written notice on the Utah Public Notice Website, if the municipality or district has a current annual budget of less than \$1 million.

(c) A public body is in compliance with the provisions of Subsection (3)(a) (ii) by providing notice to a newspaper or local media correspondent under the provisions of Subsection 63F-1-701 (4)(d).

(4) A public body is encouraged to develop and use additional electronic means to provide notice of its meetings under Subsection (3).

(5)

(a) The notice requirement of Subsection (1) may be disregarded if:

(i) because of unforeseen circumstances it is necessary for a public body to hold an emergency meeting to consider matters of an emergency or urgent nature; and

(ii) the public body gives the best notice practicable of:

(A) the time and place of the emergency meeting; and

(B) the topics to be considered at the emergency meeting.

(b) An emergency meeting of a public body may not be held unless:

(i) an attempt has been made to notify all the members of the public body; and

(ii) a majority of the members of the public body approve the meeting.

(6)

(a) A public notice that is required to include an agenda under Subsection (1) shall provide reasonable specificity to notify the public as to the topics to be considered at the meeting. Each topic shall be listed under an agenda item on the meeting agenda.

(b) Subject to the provisions of Subsection (6)(c), and at the discretion of the presiding member of the public body, a topic raised by the public may be discussed during an open meeting, even if the topic raised by the public was not included in the agenda or advance public notice for the meeting.

(c) Except as provided in Subsection (5), relating to emergency meetings, a public body may not take final action on a topic in an open meeting unless the topic is:

(i) listed under an agenda item as required by Subsection (6)(a); and

(ii) included with the advance public notice required by this section.

#### § 52-4-203. Written minutes of open meetings—Public records—Recording of meetings

(1) Except as provided under Subsection (7), written minutes and a recording shall be kept of all open meetings.

(2) Written minutes of an open meeting shall include:

(a) the date, time, and place of the meeting;

(b) the names of members present and absent;

(c) the substance of all matters proposed, discussed, or decided by the public body which may include a summary of comments made by members of the public body;

(d) a record, by individual member, of each vote taken by the public body;

(e) the name of each person who:

(i) is not a member of the public body; and

(ii) after being recognized by the presiding member of the public body, provided testimony or comments to the public body;

(f) the substance, in brief, of the testimony or comments provided by the public under Subsection (2)(e); and

(g) any other information that is a record of the proceedings of the meeting that any member requests be entered in the minutes or recording.

(3) A recording of an open meeting shall:

(a) be a complete and unedited record of all open portions of the meeting from the commencement of the meeting through adjournment of the meeting; and

(b) be properly labeled or identified with the date, time, and place of the meeting.

(4) The written minutes and recording of an open meeting are public records under Title 63G, Chapter 2, Government Records Access and Management Act, as follows:

(a) Written minutes that have been prepared in a form awaiting only formal approval by the public body are a public record.

(b) Written minutes shall be available to the public within a reasonable time after the end of the meeting.

(c) Written minutes that are made available to the public before approval by the public body under Subsection (4)(d) shall be clearly identified as “awaiting formal approval” or “unapproved” or with some other appropriate notice that the written minutes are subject to change until formally approved.

(d) A public body shall establish and implement procedures for the public body’s approval of the written minutes of each meeting.

(e) Written minutes are the official record of action taken at the meeting.

(f) A recording of an open meeting shall be available to the public for listening within three business days after the end of the meeting.

(5) All or any part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting.

(6) The written minutes or recording of an open meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.

(7) Notwithstanding Subsection (1), a recording is not required to be kept of:

(a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken by the public body; or

(b) an open meeting of a local district under Title 17B, Limited Purpose Local Government Entities—Local Districts, or special service district under Title 17D, Chapter 1, Special Service District Act, if the district’s annual budgeted expenditures for all funds, excluding capital expenditures and debt service, are \$50,000 or less.

*§ 52-4-204. Closed meeting held upon vote of members—Business—Reasons for meeting recorded*

(1) A closed meeting may be held if:

(a)

(i) a quorum is present;

(ii) the meeting is an open meeting for which notice has been given under Section 52-4-202; and

(iii)

(A) two-thirds of the members of the public body present at the open meeting vote to approve closing the meeting;

(B) for a meeting that is required to be closed under Section 52-4-205, if a majority of the members of the public body present at an open meeting vote to approve closing the meeting; or

(C) for an ethics committee of the Legislature that is conducting an open meeting for the purpose of reviewing an ethics complaint, a majority of the members present vote to approve closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the complaint; or

(b) the Independent Legislative Ethics Commission, the closed meeting is convened for the purpose of conducting business relating to the receipt or review of an ethics complaint, provided that public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of “conducting business

relating to the receipt or review of ethics complaints”.

(2) A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Section 52-4-205.

(3) An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.

(4) The following information shall be publicly announced and entered on the minutes of the open meeting at which the closed meeting was approved:

(a) the reason or reasons for holding the closed meeting;

(b) the location where the closed meeting will be held; and

(c) the vote by name, of each member of the public body, either for or against the motion to hold the closed meeting.

(5) Except as provided in Subsection 52-4-205(2), nothing in this chapter shall be construed to require any meeting to be closed to the public.

*§ 52-4-205. Purposes of closed meetings*

(1) A closed meeting described under Section 52-4-204 may only be held for:

(a) discussion of the character, professional competence, or physical or mental health of an individual;

(b) strategy sessions to discuss collective bargaining;

(c) strategy sessions to discuss pending or reasonably imminent litigation;

(d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, if public discussion of the transaction would:

(i) disclose the appraisal or estimated value of the property under consideration; or

(ii) prevent the public body from completing the transaction on the best possible terms;

(e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:

(i) public discussion of the transaction would:

(A) disclose the appraisal or estimated value of the property under consideration; or

(B) prevent the public body from completing the transaction on the best possible terms;

(ii) the public body previously gave public notice that the property would be offered for sale; and

(iii) the terms of the sale are publicly disclosed before the public body approves the sale;

(f) discussion regarding deployment of security personnel, devices, or systems;

(g) investigative proceedings regarding allegations of criminal misconduct;

(h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;

(i) as relates to an ethics committee of the Legislature, a purpose permitted under Subsection 52-4-204(1)(a)(iii)(B);

(j) as relates to a county legislative body, discussing commercial information as defined in Section 59-1-404; or

(k) a purpose for which a meeting is required to be closed under Subsection (2).

(2) The following meetings shall be closed:

(a) a meeting of the Health and Human Services Interim Committee to review a fatality review report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); and

(b) a meeting of the Child Welfare Legislative Oversight Panel to:

(i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); or

(ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5).

(3) A public body may not interview a person applying to fill an elected position in a closed meeting.

*§ 52-4-206. Record of closed meetings*

(1) Except as provided under Subsection (6), if a public body closes a meeting under Subsection 52-4-205(1), the public body:

- (a) shall make a recording of the closed portion of the meeting; and
- (b) may keep detailed written minutes that disclose the content of the closed portion of the meeting.

(2) A recording of a closed meeting shall be complete and unedited from the commencement of the closed meeting through adjournment of the closed meeting.

(3) The recording and any minutes of a closed meeting shall include:

- (a) the date, time, and place of the meeting;
- (b) the names of members present and absent; and
- (c) the names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.

(4) Minutes or recordings of a closed meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.

(5) Both a recording and written minutes of closed meetings are protected records under Title 63G, Chapter 2, Government Records Access and Management Act, except that the records may be disclosed under a court order only as provided under Section 52-4-304.

(6) If a public body closes a meeting exclusively for the purposes described under Subsection 52-4-205(1)(a), (1)(f), or (2):

- (a) the person presiding shall sign a sworn statement affirming that the sole purpose for closing the meeting was to discuss the purposes described under Subsection 52-4-205(1)(a), (1)(f), or (2); and
- (b) the provisions of Subsection (1) of this section do not apply.

*§ 52-4-207. Electronic meetings—Authorization—Requirements*

(1) A public body may convene and conduct an electronic meeting in accordance with this section.

(2)

(a) A public body may not hold an electronic meeting unless the public body has adopted a resolution, rule, or ordinance governing the use of electronic meetings.

(b) The resolution, rule, or ordinance may:

- (i) prohibit or limit electronic meetings based on budget, public policy, or logistical considerations;
- (ii) require a quorum of the public body to:
  - (A) be present at a single anchor location for the meeting; and
  - (B) vote to approve establishment of an electronic meeting in order to include other members of the public body through an electronic connection;
- (iii) require a request for an electronic meeting to be made by a member of a public body up to three days prior to the meeting to allow for arrangements to be made for the electronic meeting;
- (iv) restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability; or
- (v) establish other procedures, limitations, or conditions governing electronic meetings not in conflict with this section.

(3) A public body that convenes or conducts an electronic meeting shall:

- (a) give public notice of the meeting:
  - (i) in accordance with Section 52-4-202; and
  - (ii) post written notice at the anchor location;
- (b) in addition to giving public notice required by Subsection (3)(a), provide:
  - (i) notice of the electronic meeting to the members of the public body at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present; and
  - (ii) a description of how the members will be connected to the electronic meeting;
- (c) establish one or more anchor locations for the public meeting, at least one of which is in the building and political subdivision where the public body would normally meet if they were not holding an electronic meeting;

(d) provide space and facilities at the anchor location so that interested persons and the public may attend and monitor the open portions of the meeting; and

(e) if comments from the public will be accepted during the electronic meeting, provide space and facilities at the anchor location so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(4) Compliance with the provisions of this section by a public body constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.

*§ 52-4-208. Chance or social meetings*

- (1) This chapter does not apply to any chance meeting or a social meeting.
- (2) A chance meeting or social meeting may not be used to circumvent the provisions of this chapter.

*§ 52-4-301. Disruption of meetings*

This chapter does not prohibit the removal of any person from a meeting, if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.

*§ 52-4-302. Suit to void final action—Limitation—Exceptions*

(1)

(a) Any final action taken in violation of Section 52-4-201, 52-4-202, or 52-4-207 is voidable by a court of competent jurisdiction.

(b) A court may not void a final action taken by a public body for failure to comply with the posting written notice requirements under Subsection 52-4-202(3)(a)(i)(B) if:

- (i) the posting is made for a meeting that is held before April 1, 2009; or
- (ii)

(A) the public body otherwise complies with the provisions of Section 52-4-202; and

(B) the failure was a result of unforeseen Internet hosting or communication technology failure.

(2) Except as provided under Subsection (3), a suit to void final action shall be commenced within 90 days after the date of the action.

(3) A suit to void final action concerning the issuance of bonds, notes, or other evidences of indebtedness shall be commenced within 30 days after the date of the action.

*§ 52-4-303. Enforcement of chapter—Suit to compel compliance*

(1) The attorney general and county attorneys of the state shall enforce this chapter.

(2) The attorney general shall, on at least a yearly basis, provide notice to all public bodies that are subject to this chapter of any material changes to the requirements for the conduct of meetings under this chapter.

(3) A person denied any right under this chapter may commence suit in a court of competent jurisdiction to:

- (a) compel compliance with or enjoin violations of this chapter; or
- (b) determine the chapter's applicability to discussions or decisions of a public body.

(4) The court may award reasonable attorney fees and court costs to a successful plaintiff.

*§ 52-4-304. Action challenging closed meeting*

(1) Notwithstanding the procedure established under Subsection 63G-2-202(7), in any action brought under the authority of this chapter to challenge the legality of a closed meeting held by a public body, the court shall:

- (a) review the recording or written minutes of the closed meeting in camera; and
- (b) decide the legality of the closed meeting.

(2)

(a) If the judge determines that the public body did not violate Section 52-4-204, 52-4-205, or 52-4-206 regarding closed meetings, the judge shall dismiss the case without disclosing or revealing any information from the recording or minutes of the closed meeting.

(b) If the judge determines that the public body violated Section 52-4-204, 52-4-205, or 52-4-206 regarding closed meetings, the judge shall publicly disclose or reveal from the recording or minutes of the closed meeting all information about the portion of the meeting that was illegally closed.

*§ 52-4-305. Criminal penalty for closed meeting violation*

In addition to any other penalty under this chapter, a member of a public body who knowingly or intentionally violates or who knowingly or intentionally abets or advises a violation of any of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.

