

REQUEST FOR LEGISLATION AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies a provision relating to the status of information on a request for legislation form.

Highlighted Provisions:

This bill:

- ▶ provides that information on a request for legislation form that identifies the name of the legislator submitting the form, the date the form is submitted, and the short title assigned to the requested legislation is public information, even if the legislator requests that the form otherwise remain protected; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-2-305, as last amended by Laws of Utah 2014, Chapters 90 and 320

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

Section 1. Section **63G-2-305** is amended to read:



28 **63G-2-305. Protected records.**

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

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

32 (2) commercial information or nonindividual financial information obtained from a
33 person if:

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

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

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

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

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

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

50 (6) records, the disclosure of which would impair governmental procurement
51 proceedings or give an unfair advantage to any person proposing to enter into a contract or
52 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
53 Subsection (6) does not restrict the right of a person to have access to, after the contract or
54 grant has been awarded and signed by all parties, a bid, proposal, application, or other
55 information submitted to or by a governmental entity in response to:

56 (a) an invitation for bids;

57 (b) a request for proposals;

58 (c) a request for quotes;

- 59 (d) a grant; or
- 60 (e) other similar document;
- 61 (7) information submitted to or by a governmental entity in response to a request for
- 62 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict
- 63 the right of a person to have access to the information, after:
 - 64 (a) a contract directly relating to the subject of the request for information has been
 - 65 awarded and signed by all parties; or
 - 66 (b) (i) a final determination is made not to enter into a contract that relates to the
 - 67 subject of the request for information; and
 - 68 (ii) at least two years have passed after the day on which the request for information is
 - 69 issued;
 - 70 (8) records that would identify real property or the appraisal or estimated value of real
 - 71 or personal property, including intellectual property, under consideration for public acquisition
 - 72 before any rights to the property are acquired unless:
 - 73 (a) public interest in obtaining access to the information is greater than or equal to the
 - 74 governmental entity's need to acquire the property on the best terms possible;
 - 75 (b) the information has already been disclosed to persons not employed by or under a
 - 76 duty of confidentiality to the entity;
 - 77 (c) in the case of records that would identify property, potential sellers of the described
 - 78 property have already learned of the governmental entity's plans to acquire the property;
 - 79 (d) in the case of records that would identify the appraisal or estimated value of
 - 80 property, the potential sellers have already learned of the governmental entity's estimated value
 - 81 of the property; or
 - 82 (e) the property under consideration for public acquisition is a single family residence
 - 83 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
 - 84 the property as required under Section [78B-6-505](#);
 - 85 (9) records prepared in contemplation of sale, exchange, lease, rental, or other
 - 86 compensated transaction of real or personal property including intellectual property, which, if
 - 87 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
 - 88 of the subject property, unless:
 - 89 (a) the public interest in access is greater than or equal to the interests in restricting

90 access, including the governmental entity's interest in maximizing the financial benefit of the
91 transaction; or

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

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

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

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

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

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

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

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

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

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

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

121 Board of Pardons and Parole, or the Department of Human Services that are based on the
 122 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
 123 jurisdiction;

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

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

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

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

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

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

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

139 (A) members of a legislative body;

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

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

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

144 (20) [~~(a)~~] records in the custody or control of the Office of Legislative Research and
 145 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
 146 legislation or contemplated course of action before the legislator has elected to support the
 147 legislation or course of action, or made the legislation or course of action public[~~;~~ and], except
 148 that:

149 [~~(b) notwithstanding Subsection (20)(a), the~~]

150 (a) a form to request legislation submitted to the Office of Legislative Research and
 151 General Counsel is a public [document unless a legislator asks that the records requesting the

152 ~~legislation]~~ record unless the legislator submitting the request form asks that the request form
153 be maintained as a protected [records] record until [such time as] the legislator elects to make
154 the legislation or course of action public; and

155 (b) information on a request form that identifies the legislator submitting the request
156 form, the date the request form is submitted, and the short title by which the requested
157 legislation is designated is public information, even if the legislator submitting the request form
158 asks that the request form otherwise be maintained as a protected record under Subsection
159 (20)(a);

160 (21) research requests from legislators to the Office of Legislative Research and
161 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
162 in response to these requests;

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

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

165 (a) collective bargaining; or

166 (b) imminent or pending litigation;

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

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

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

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

178 (28) records of an institution within the state system of higher education defined in
179 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
180 retention decisions, and promotions, which could be properly discussed in a meeting closed in
181 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
182 the final decisions about tenure, appointments, retention, promotions, or those students

183 admitted, may not be classified as protected under this section;

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

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

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

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

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

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

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

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

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

214 the donor, provided that:

215 (a) the donor requests anonymity in writing;

216 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
217 classified protected by the governmental entity under this Subsection (37); and

218 (c) except for an institution within the state system of higher education defined in
219 Section [53B-1-102](#), the governmental unit to which the donation is made is primarily engaged
220 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
221 over the donor, a member of the donor's immediate family, or any entity owned or controlled
222 by the donor or the donor's immediate family;

223 (38) accident reports, except as provided in Sections [41-6a-404](#), [41-12a-202](#), and
224 [73-18-13](#);

225 (39) a notification of workers' compensation insurance coverage described in Section
226 [34A-2-205](#);

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

230 (i) unpublished lecture notes;

231 (ii) unpublished notes, data, and information:

232 (A) relating to research; and

233 (B) of:

234 (I) the institution within the state system of higher education defined in Section
235 [53B-1-102](#); or

236 (II) a sponsor of sponsored research;

237 (iii) unpublished manuscripts;

238 (iv) creative works in process;

239 (v) scholarly correspondence; and

240 (vi) confidential information contained in research proposals;

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

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

244 (41) (a) records in the custody or control of the Office of Legislative Auditor General

245 that would reveal the name of a particular legislator who requests a legislative audit prior to the
246 date that audit is completed and made public; and

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

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

254 (a) a production facility; or

255 (b) a magazine;

256 (43) information:

257 (a) contained in the statewide database of the Division of Aging and Adult Services
258 created by Section [62A-3-311.1](#); or

259 (b) received or maintained in relation to the Identity Theft Reporting Information
260 System (IRIS) established under Section [67-5-22](#);

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

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

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

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

270 (48) except to the extent that the record is exempt from this chapter pursuant to Section
271 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or
272 prepared or maintained by the Division of Emergency Management, and the disclosure of
273 which would jeopardize:

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

275 (b) the security of:

276 (i) governmental property;
277 (ii) governmental programs; or
278 (iii) the property of a private person who provides the Division of Emergency
279 Management information;
280 (49) records of the Department of Agriculture and Food that provides for the
281 identification, tracing, or control of livestock diseases, including any program established under
282 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act or Title 4, Chapter 31, Control
283 of Animal Disease;
284 (50) as provided in Section 26-39-501:
285 (a) information or records held by the Department of Health related to a complaint
286 regarding a child care program or residential child care which the department is unable to
287 substantiate; and
288 (b) information or records related to a complaint received by the Department of Health
289 from an anonymous complainant regarding a child care program or residential child care;
290 (51) unless otherwise classified as public under Section 63G-2-301 and except as
291 provided under Section 41-1a-116, an individual's home address, home telephone number, or
292 personal mobile phone number, if:
293 (a) the individual is required to provide the information in order to comply with a law,
294 ordinance, rule, or order of a government entity; and
295 (b) the subject of the record has a reasonable expectation that this information will be
296 kept confidential due to:
297 (i) the nature of the law, ordinance, rule, or order; and
298 (ii) the individual complying with the law, ordinance, rule, or order;
299 (52) the name, home address, work addresses, and telephone numbers of an individual
300 that is engaged in, or that provides goods or services for, medical or scientific research that is:
301 (a) conducted within the state system of higher education, as defined in Section
302 53B-1-102; and
303 (b) conducted using animals;
304 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
305 Private Proposal Program, to the extent not made public by rules made under that chapter;
306 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance

307 Evaluation Commission concerning an individual commissioner's vote on whether or not to
308 recommend that the voters retain a judge;

309 (55) information collected and a report prepared by the Judicial Performance
310 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
311 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
312 the information or report;

313 (56) records contained in the Management Information System created in Section
314 62A-4a-1003;

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

317 (58) information requested by and provided to the Utah State 911 Committee under
318 Section 63H-7-303;

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

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

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

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

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

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

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

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

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

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

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

350 (63) a record described in Section [63G-12-210](#); and

351 (64) captured plate data that is obtained through an automatic license plate reader
352 system used by a governmental entity as authorized in Section [41-6a-2003](#).

Legislative Review Note
as of 5-20-14 12:54 PM

Office of Legislative Research and General Counsel