

Senator Curtis S. Bramble proposes the following substitute bill:

GOVERNMENT RECORDS AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Bradley M. Daw

LONG TITLE

General Description:

This bill modifies provisions relating to government records.

Highlighted Provisions:

This bill:

- ▶ modifies the process of appealing the denial of a record request;
- ▶ modifies provisions relating to a political subdivision's process for appealing a decision concerning records of the political subdivision;
- ▶ makes certain consumer complaints and responses filed with the Division of Consumer Protection public records; and
- ▶ modifies the timeline that applies in an appeal to the records committee and allows the records committee to defer consideration of an appeal under certain circumstances.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 26 **13-15-3**, as last amended by Laws of Utah 2010, Chapter 278
- 27 **63G-2-401**, as last amended by Laws of Utah 2012, Chapter 377
- 28 **63G-2-402**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 29 **63G-2-403**, as last amended by Laws of Utah 2013, Chapter 445
- 30 **63G-2-404**, as last amended by Laws of Utah 2012, Chapter 377
- 31 **63G-2-501**, as last amended by Laws of Utah 2013, Chapter 231
- 32 **63G-2-701**, as last amended by Laws of Utah 2009, Chapter 131

33 ENACTS:

- 34 **13-26-12**, Utah Code Annotated 1953
- 35 **63G-2-400.5**, Utah Code Annotated 1953



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

38 Section 1. Section **13-15-3** is amended to read:

39 **13-15-3. Administration and enforcement -- Powers -- Legal counsel -- Fees --**
 40 **Consumer complaints.**

41 (1) The division shall administer and enforce this chapter. In the exercise of its
 42 responsibilities, the division shall enjoy the powers, and be subject to the constraints, set forth
 43 in Title 13, Chapter 2, Division of Consumer Protection.

44 (2) The attorney general, upon request, shall give legal advice to, and act as counsel
 45 for, the division in the exercise of its responsibilities under this chapter.

46 (3) All fees collected under this chapter shall be deposited in the Commerce Service
 47 Account created by Section **13-1-2**.

48 (4) (a) As used in this Subsection (4), "consumer complaint" means a complaint that:

- 49 (i) is filed with the division by a consumer or business;
- 50 (ii) alleges facts relating to conduct that the division regulates under this chapter; and
- 51 (iii) (A) alleges a loss to the consumer or business of \$3,500 or more; or
 52 (B) is one of at least 50 other complaints against the same person filed by other
 53 consumers or businesses during the four years immediately preceding the filing of the
 54 complaint.

55 (b) For purposes of determining the number of complaints against the same person
 56 under Subsection (4)(a)(iii)(B), the division may consider complaints filed against multiple

57 corporations, limited liability companies, partnerships, or other business entities under
58 common ownership to be complaints against the same person.

59 (c) Notwithstanding Subsection 13-11-7(2) and subject to Subsections (4)(d) and (e), a
60 consumer complaint:

61 (i) is a public record; and

62 (ii) may not be classified as a private, controlled, or protected record under Title 63G,
63 Chapter 2, Government Records Access and Management Act.

64 (d) Subsection (4)(c) does not apply to a consumer complaint:

65 (i) (A) if the division determines through an administrative proceeding that the
66 consumer complaint is nonmeritorious; and

67 (B) beginning when the nonmeritorious determination is made; or

68 (ii) that has been on file with the division for more than four years.

69 (e) Before making a consumer complaint that is subject to Subsection (4)(c) or a
70 response described in Subsection (4)(f) available to the public, the division:

71 (i) shall redact from the consumer complaint or response any information that would
72 disclose the address, Social Security number, bank account information, email address, or
73 telephone number of the consumer or business; and

74 (ii) may redact the name of the consumer or business and any other information that
75 could, in the division's judgment, disclose the identity of the consumer or business filing the
76 consumer complaint.

77 (f) A person's initial, written response to a consumer complaint that is subject to
78 Subsection (4)(c) is a public record.

79 Section 2. Section 13-26-12 is enacted to read:

80 **13-26-12. Consumer complaints are public.**

81 (1) As used in this section, "consumer complaint" means a complaint that:

82 (a) is filed with the division by a consumer or business;

83 (b) alleges facts relating to conduct that the division regulates under this chapter; and

84 (c) (i) alleges a loss to the consumer or business of \$3,500 or more; or

85 (ii) is one of at least 50 other complaints against the same person filed by other
86 consumers or businesses during the four years immediately preceding the filing of the
87 complaint.

88 (2) For purposes of determining the number of complaints against the same person
89 under Subsection (1)(c)(ii), the division may consider complaints filed against multiple
90 corporations, limited liability companies, partnerships, or other business entities under
91 common ownership to be complaints against the same person.

92 (3) Notwithstanding Subsection 13-11-7(2) and subject to Subsections (4) and (5), a
93 consumer complaint:

94 (a) is a public record; and

95 (b) may not be classified as a private, controlled, or protected record under Title 63G,
96 Chapter 2, Government Records Access and Management Act.

97 (4) Subsection (3) does not apply to a consumer complaint:

98 (a) (i) if the division determines through an administrative proceeding that the
99 consumer complaint is nonmeritorious; and

100 (ii) beginning when the nonmeritorious determination is made; or

101 (b) that has been on file with the division for more than four years.

102 (5) Before making a consumer complaint that is subject to Subsection (3) or a response
103 described in Subsection (6) available to the public, the division:

104 (a) shall redact from the consumer complaint or response any information that would
105 disclose the address, Social Security number, bank account information, email address, or
106 telephone number of the consumer or business; and

107 (b) may redact the name of the consumer or business and any other information that
108 could, in the division's judgment, disclose the identity of the consumer or business filing the
109 consumer complaint.

110 (6) A person's initial, written response to a consumer complaint that is subject to
111 Subsection (2) is a public record.

112 Section 3. Section **63G-2-400.5** is enacted to read:

113 **63G-2-400.5. Definitions.**

114 As used in this part:

115 (1) "Access denial" means a governmental entity's denial, under Subsection
116 63G-2-204(8) or Section 63G-2-205, in whole or in part, of a record request.

117 (2) "Appellate affirmation" means a decision of a chief administrative officer, local
118 appeals board, or records committee affirming an access denial.

119 (3) "Interested party" means a person, other than a requester, who is aggrieved by an
120 access denial or an appellate affirmation, whether or not the person participated in proceedings
121 leading to the access denial or appellate affirmation.

122 (4) "Local appeals board" means an appeals board established by a political subdivision
123 under Subsection 63G-2-701(5)(c).

124 (5) "Record request" means a request for a record under Section 63G-2-204.

125 (6) "Records committee appellant" means:

126 (a) a political subdivision that seeks to appeal a decision of a local appeals board to the
127 records committee; or

128 (b) a requester or interested party who seeks to appeal to the records committee a
129 decision affirming an access denial.

130 (7) "Requester" means a person who submits a record request to a governmental entity.

131 Section 4. Section **63G-2-401** is amended to read:

132 **63G-2-401. Appeal to chief administrative officer -- Notice of the decision of the**
133 **appeal.**

134 (1) (a) [~~Any person aggrieved by a governmental entity's access determination under~~
135 ~~this chapter, including a person not a party to the governmental entity's proceeding,] A
136 requester or interested party may appeal [the determination within 30 days] an access denial to
137 the chief administrative officer of the governmental entity by filing a notice of appeal with the
138 chief administrative officer within 30 days after the governmental entity sends a notice of
139 denial under Section 63G-2-205.~~

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

148 (2) [~~The~~] A notice of appeal shall contain [~~the following information~~]:

149 (a) the [~~petitioner's~~] name, mailing address, and daytime telephone number of the

150 requester or interested party; and

151 (b) the relief sought.

152 (3) The [~~petitioner~~] requester or interested party may file a short statement of facts,
153 reasons, and legal authority in support of the appeal.

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

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

159 (ii) send notice of the business confidentiality claim and the schedule for the chief
160 administrative officer's determination to the requester or interested party within three business
161 days after receiving notice of the [~~requester's~~] appeal.

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

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

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

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

171 (b) If the chief administrative officer fails to make a [~~determination~~] decision on an
172 appeal of an access denial within the time specified in Subsection (5)(a), the failure [~~shall be~~
173 ~~considered~~] is the equivalent of [~~an order denying the appeal~~] a decision affirming the access
174 denial.

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

177 (6) Except as provided in Section 63G-2-406, the chief administrative officer may,
178 upon consideration and weighing of the various interests and public policies pertinent to the
179 classification and disclosure or nondisclosure, order the disclosure of information properly
180 classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if

181 the interests favoring access are greater than or equal to the interests favoring restriction of
182 access.

183 (7) (a) The governmental entity shall send written notice of the [~~determination of the~~
184 chief administrative [~~officer~~] officer's decision to all participants.

185 (b) If the chief administrative [~~officer affirms the~~] officer's decision is to affirm the
186 access denial in whole or in part, the [~~denial~~] notice under Subsection (7)(a) shall include:

187 (i) a statement that the requester or interested party has the right to appeal the [~~denial~~]
188 decision, as provided in Section 63G-2-402, to [either]:

189 (A) the records committee [~~or~~];

190 (B) district court[~~;~~]; or

191 (C) the local appeals board, if the governmental entity is a political subdivision and the
192 governmental entity has established a local appeals board;

193 (ii) the time limits for filing an appeal[~~;~~]; and

194 (iii) the name and business address of:

195 (A) the executive secretary of the records committee[~~;~~]; and

196 (B) the individual designated as the contact individual for the appeals board, if the
197 governmental entity is a political subdivision that has established an appeals board under
198 Subsection 63G-2-701(5)(c).

199 (8) A person aggrieved by a governmental entity's classification or designation
200 determination under this chapter, but who is not requesting access to the records, may appeal
201 that determination using the procedures provided in this section. If a nonrequester is the only
202 appellant, the procedures provided in this section shall apply, except that the [~~determination~~]
203 decision on the appeal shall be made within 30 days after receiving the notice of appeal.

204 (9) The duties of the chief administrative officer under this section may be delegated.
205 Section 5. Section 63G-2-402 is amended to read:

206 **63G-2-402. Appealing a decision of a chief administrative officer.**

207 (1) If the decision of the chief administrative officer of a governmental entity [~~denies a~~
208 ~~records~~] under Section 63G-2-401 is to affirm the denial of a record request [under Section
209 63G-2-401], the requester may:

210 (a) appeal the [~~denial~~] decision to the records committee, as provided in Section
211 63G-2-403; [or]

212 (b) petition for judicial review of the decision in district court, as provided in Section
213 [63G-2-404](#)[-]; or

214 [~~(2) Any person aggrieved by a determination of the chief administrative officer of a~~
215 ~~governmental entity under this chapter, including persons who did not participate in the~~
216 ~~governmental entity's proceeding, may appeal the determination to the records committee as~~
217 ~~provided in Section [63G-2-403](#).]~~

218 (c) appeal the decision to the local appeals board if:

219 (i) the decision is of a chief administrative officer of a governmental entity that is a
220 political subdivision; and

221 (ii) the political subdivision has established a local appeals board.

222 (2) A requester who appeals a chief administrative officer's decision to the records
223 committee or a local appeals board does not lose or waive the right to seek judicial review of
224 the decision of the records committee or local appeals board.

225 (3) As provided in Section [63G-2-403](#), an interested party may appeal to the records
226 committee a chief administrative officer's decision under Section [63G-2-401](#) affirming an
227 access denial.

228 Section 6. Section **63G-2-403** is amended to read:

229 **63G-2-403. Appeals to the records committee.**

230 (1) (a) A [~~petitioner, including an aggrieved person who did not participate in the~~
231 ~~appeal to the governmental entity's chief administrative officer, may appeal]~~ records committee
232 appellant appeals to the records committee by filing a notice of appeal with the executive
233 secretary of the records committee no later than [~~-(a)~~] 30 days after the [~~day on which the chief~~
234 ~~administrative officer of the governmental entity grants or denies the record request in whole or~~
235 ~~in part, including a denial under Subsection [63G-2-204\(8\)](#).]~~ date of issuance of the decision
236 being appealed.

237 (b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the
238 executive secretary of the records committee no later than 45 days after the day on which the
239 [~~original~~] record request [~~for a record~~] is made if:

240 (i) the circumstances described in Subsection [63G-2-401\(1\)\(b\)](#) occur; and

241 (ii) the chief administrative officer [~~failed~~] fails to make a [~~determination~~] decision
242 under Section [63G-2-401](#).

243 (2) The notice of appeal shall [~~contain the following information~~]:
244 (a) contain the [~~petitioner's~~] name, mailing address, and daytime telephone number of
245 the records committee appellant;
246 [~~(b) a copy of any denial of the record request; and~~]
247 (b) be accompanied by a copy of the decision being appealed; and
248 (c) state the relief sought.
249 (3) The [~~petitioner~~] records committee appellant:
250 (a) shall, on the day on which the [~~petitioner files an appeal to~~] notice of appeal is filed
251 with the records committee, serve a copy of the notice of appeal on:
252 (i) the government entity [~~, described in Subsection (1), to which the appeal relates;~~
253 ~~and~~] whose access denial is the subject of the appeal, if the records committee appellant is a
254 requester or interested party; or
255 (ii) the requester or interested party who is a party to the local appeals board
256 proceeding that resulted in the decision that the political subdivision is appealing to the records
257 committee, if the records committee appellant is a political subdivision; and
258 (b) may file a short statement of facts, reasons, and legal authority in support of the
259 appeal.
260 (4) (a) Except as provided in [~~Subsection~~] Subsections (4)(b) and (c), no later than
261 [~~five~~] seven business days after receiving a notice of appeal, the executive secretary of the
262 records committee shall:
263 (i) schedule a hearing for the records committee to discuss the appeal at the next
264 regularly scheduled committee meeting falling at least [~~14~~] 16 days after the date the notice of
265 appeal is filed but no longer than [~~52~~] 64 calendar days after the date the notice of appeal was
266 filed except that the records committee may schedule an expedited hearing upon application of
267 the [~~petitioner~~] records committee appellant and good cause shown;
268 (ii) send a copy of the notice of hearing to the [~~petitioner~~] records committee appellant;
269 and
270 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing
271 to:
272 (A) each member of the records committee;
273 (B) the records officer and the chief administrative officer of the governmental entity

274 ~~[from which the appeal originated]~~ whose access denial is the subject of the appeal, if the
275 records committee appellant is a requester or interested party;

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

278 (D) all persons who participated in the proceedings before the governmental entity's
279 chief administrative officer, if the appeal is of the chief administrative officer's decision
280 affirming an access denial.

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

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

289 (B) The committee shall make rules to implement this section as provided by Title
290 63G, Chapter 3, Utah Administrative Rulemaking Act.

291 (c) The executive secretary of the records committee may schedule a hearing on an
292 appeal to the records committee at a regularly scheduled records committee meeting that is
293 later than the period described in Subsection (4)(a)(i) if that records committee meeting is the
294 first regularly scheduled records committee meeting at which there are fewer than 10 appeals
295 scheduled to be heard.

296 (5) (a) ~~[A]~~ No later than five business days before the hearing, a governmental entity
297 shall submit to the executive secretary of the records committee written statement of facts,
298 reasons, and legal authority in support of the governmental entity's position ~~[must be submitted~~
299 ~~to the executive secretary of the records committee not later than five business days before the~~
300 ~~hearing]~~.

301 (b) The governmental entity shall send a copy of the written statement ~~[to the~~
302 ~~petitioner]~~ by first class mail, postage prepaid, to the requester or interested party involved in
303 the appeal. The executive secretary shall forward a copy of the written statement to each
304 member of the records committee.

305 (6) (a) No later than 10 business days after the notice of appeal is sent by the executive
306 secretary, a person whose legal interests may be substantially affected by the proceeding may
307 file a request for intervention before the records committee.

308 (b) Any written statement of facts, reasons, and legal authority in support of the
309 intervenor's position shall be filed with the request for intervention.

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

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

314 (8) At the hearing, the records committee shall allow the parties to testify, present
315 evidence, and comment on the issues. The records committee may allow other interested
316 persons to comment on the issues.

317 (9) (a) (i) The records committee:

318 (A) may review the disputed records~~[- However, if the committee is weighing the~~
319 ~~various interests under Subsection (11), the committee must review the disputed records. The~~
320 ~~review shall be in camera.]; and~~

321 (B) shall review the disputed records, if the committee is weighing the various interests
322 under Subsection (11).

323 (ii) A review of the disputed records under Subsection (9)(a)(i) shall be in camera.

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

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

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

332 (c) (i) The records committee's review shall be de novo~~[-], if the appeal is an appeal~~
333 from a decision of a chief administrative officer:

334 (A) issued under Section [63G-2-401](#); or

335 (B) issued by a chief administrative officer of a political subdivision that has not

336 established a local appeals board.

337 (ii) For an appeal from a decision of a local appeals board, the records committee shall
338 review and consider the decision of the local appeals board.

339 (11) (a) No later than seven business days after the hearing, the records committee shall
340 issue a signed order [~~either~~]:

341 (i) granting the [~~petition~~] relief sought, in whole or in part; or

342 (ii) upholding the [~~determination of the~~] governmental [~~entity~~] entity's access denial, in
343 whole or in part.

344 (b) Except as provided in Section 63G-2-406, the records committee may, upon
345 consideration and weighing of the various interests and public policies pertinent to the
346 classification and disclosure or nondisclosure, order the disclosure of information properly
347 classified as private, controlled, or protected if the public interest favoring access is greater
348 than or equal to the interest favoring restriction of access.

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

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

353 (ii) business confidentiality interests in the case of a record protected under Subsection
354 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

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

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

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

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

366 (d) a brief summary of the appeals process, the time limits for filing an appeal, and a

367 notice that in order to protect its rights on appeal, the party may wish to seek advice from an
368 attorney.

369 (13) If the records committee fails to issue a decision within ~~[57]~~ 73 calendar days of
370 the filing of the notice of appeal, that failure ~~[shall be considered]~~ is the equivalent of an order
371 denying the appeal. ~~[The petitioner]~~ A records committee appellant shall notify the records
372 committee in writing if the ~~[petitioner]~~ records committee appellant considers the appeal
373 denied.

374 (14) A party to a proceeding before the records committee may seek judicial review in
375 district court of a records committee order by filing a petition for review of the records
376 committee order as provided in Section 63G-2-404.

377 ~~[(14)]~~ (15) (a) Unless a notice of intent to appeal is filed under Subsection ~~[(14)]~~
378 (15)(b), each party to the proceeding shall comply with the order of the records committee.

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

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

384 (i) produce the record; and

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

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

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

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

391 (I) the governor for executive branch entities;

392 (II) the Legislative Management Committee for legislative branch entities; and

393 (III) the Judicial Council for judicial branch agencies entities.

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

397 Section 7. Section **63G-2-404** is amended to read:

398 **63G-2-404. Judicial review.**

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

401 ~~[(b) The petition]~~

402 (1) (a) Except as provided in Subsection (2), a petition for judicial review of an order
403 or decision, as allowed under this part or in Subsection 63G-2-701(6)(a)(ii), shall be filed no
404 later than 30 days after the date of the [records committee's] order or decision.

405 ~~[(c)]~~ (b) The records committee is a necessary party to [the] a petition for judicial
406 review of a records committee order.

407 ~~[(d)]~~ (c) The executive secretary of the records committee shall be served with notice
408 of [the] a petition for judicial review of a records committee order, in accordance with the Utah
409 Rules of Civil Procedure.

410 (2) [(a)] A requester [may] who files a petition for judicial review [by the district court
411 of a governmental entity's determination as specified in] under Subsection 63G-2-402(1)(b)[-
412 (b) The requester] shall file [a] the petition no later than:

413 ~~[(i)]~~ (a) 30 days after the governmental entity has responded to the records request by
414 either providing the requested [records] record or denying the request in whole or in part;

415 ~~[(ii)]~~ (b) 35 days after the [original] requester submits a record request if the
416 governmental entity [failed] fails to respond to the request; or

417 ~~[(iii)]~~ (c) 45 days after the [original] requester submits a record request [for records] if:

418 ~~[(A)]~~ (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

419 ~~[(B)]~~ (ii) the chief administrative officer [failed] fails to make a determination under
420 Section 63G-2-401.

421 ~~[(3) [The] A~~ (3) A petition for judicial review [shall be] is a complaint governed by the Utah
422 Rules of Civil Procedure and shall contain:

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

424 (b) a copy of the records committee order from which the appeal is taken, if the
425 petitioner [brought a prior appeal to the] is seeking judicial review of an order of the records
426 committee;

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

- 429 (d) a request for relief specifying the type and extent of relief requested; and
- 430 (e) a statement of the reasons why the petitioner is entitled to relief.
- 431 (4) If the appeal is based on the denial of access to a protected record based on a claim
- 432 of business confidentiality, the court shall allow the claimant of business confidentiality to
- 433 provide to the court the reasons for the claim of business confidentiality.
- 434 (5) All additional pleadings and proceedings in the district court are governed by the
- 435 Utah Rules of Civil Procedure.
- 436 (6) The district court may review the disputed records. The review shall be in camera.
- 437 (7) The court shall:
- 438 (a) make its decision de novo, but, for a petition seeking judicial review of a records
- 439 committee order, allow introduction of evidence presented to the records committee;
- 440 (b) determine all questions of fact and law without a jury; and
- 441 (c) decide the issue at the earliest practical opportunity.
- 442 (8) (a) Except as provided in Section 63G-2-406, the court may, upon consideration
- 443 and weighing of the various interests and public policies pertinent to the classification and
- 444 disclosure or nondisclosure, order the disclosure of information properly classified as private,
- 445 controlled, or protected if the interest favoring access is greater than or equal to the interest
- 446 favoring restriction of access.
- 447 (b) The court shall consider and, where appropriate, limit the requester's use and
- 448 further disclosure of the record in order to protect privacy interests in the case of private or
- 449 controlled records, business confidentiality interests in the case of records protected under
- 450 Subsections 63G-2-305(1) and (2), and privacy interests or the public interest in the case of
- 451 other protected records.
- 452 Section 8. Section 63G-2-501 is amended to read:
- 453 **63G-2-501. State Records Committee created -- Membership -- Terms --**
- 454 **Vacancies -- Expenses.**
- 455 (1) There is created the State Records Committee within the Department of
- 456 Administrative Services to consist of the following seven individuals:
- 457 (a) an individual in the private sector whose profession requires the individual to create
- 458 or manage records that if created by a governmental entity would be private or controlled;
- 459 (b) the director of the Division of State History or the director's designee;

- 460 (c) the governor or the governor's designee;
- 461 (d) two citizen members;
- 462 (e) one ~~[elected official]~~ person representing political subdivisions, as recommended
- 463 by the Utah League of Cities and Towns; and
- 464 (f) one individual representing the news media.

465 (2) The members specified in Subsections (1)(a), (d), (e), and (f) shall be appointed by
466 the governor with the consent of the Senate.

467 (3) (a) Except as required by Subsection (3)(b), as terms of current committee members
468 expire, the governor shall appoint each new member or reappointed member to a four-year
469 term.

470 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
471 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
472 committee members are staggered so that approximately half of the committee is appointed
473 every two years.

474 (c) Each appointed member is eligible for reappointment for one additional term.

475 (4) When a vacancy occurs in the membership for any reason, the replacement shall be
476 appointed for the unexpired term.

477 (5) A member may not receive compensation or benefits for the member's service, but
478 may receive per diem and travel expenses in accordance with:

479 (a) Section [63A-3-106](#);

480 (b) Section [63A-3-107](#); and

481 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
482 [63A-3-107](#).

483 Section 9. Section **63G-2-701** is amended to read:

484 **63G-2-701. Political subdivisions may adopt ordinances in compliance with**
485 **chapter.**

486 (1) As used in this section:

487 (a) "Access denial" means the same as that term is defined in Section [63G-2-400.5](#).

488 (b) "Interested party" means the same as that term is defined in Section [63G-2-400.5](#).

489 (c) "Requester" means the same as that term is defined in Section [63G-2-400.5](#).

490 [(+)] (2) (a) Each political subdivision may adopt an ordinance or a policy applicable

491 throughout its jurisdiction relating to information practices including classification,
492 designation, access, denials, segregation, appeals, management, retention, and amendment of
493 records.

494 (b) The ordinance or policy shall comply with the criteria set forth in this section.

495 (c) If any political subdivision does not adopt and maintain an ordinance or policy, then
496 that political subdivision is subject to this chapter.

497 (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision
498 is subject to ~~[Parts 1 and 3]~~ Part 1, General Provisions, Part 3, Classification, and Sections
499 63A-12-105, 63A-12-107, 63G-2-201, 63G-2-202, 63G-2-205, 63G-2-206, 63G-2-601, and
500 63G-2-602.

501 (e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed
502 with the state archives no later than 30 days after its effective date.

503 (f) The political subdivision shall also report to the state archives all retention
504 schedules, and all designations and classifications applied to record series maintained by the
505 political subdivision.

506 (g) The report required by Subsection ~~[(1)]~~ (2)(f) is notification to state archives of the
507 political subdivision's retention schedules, designations, and classifications. The report is not
508 subject to approval by state archives. If state archives determines that a different retention
509 schedule is needed for state purposes, state archives shall notify the political subdivision of the
510 state's retention schedule for the records and shall maintain the records if requested to do so
511 under Subsection 63A-12-105(2).

512 ~~[(2)]~~ (3) Each ordinance or policy relating to information practices shall:

513 (a) provide standards for the classification and designation of the records of the
514 political subdivision as public, private, controlled, or protected in accordance with Part 3 ~~[of~~
515 ~~this chapter]~~, Classification;

516 (b) require the classification of the records of the political subdivision in accordance
517 with those standards;

518 (c) provide guidelines for establishment of fees in accordance with Section 63G-2-203;
519 and

520 (d) provide standards for the management and retention of the records of the political
521 subdivision comparable to Section 63A-12-103.

522 ~~[(3)]~~ (4) (a) Each ordinance or policy shall establish access criteria, procedures, and
523 response times for requests to inspect, obtain, or amend records of the political subdivision,
524 and time limits for appeals consistent with this chapter.

525 (b) In establishing response times for access requests and time limits for appeals, the
526 political subdivision may establish reasonable time frames different than those set out in
527 Section [63G-2-204](#) and Part 4 ~~[of this chapter]~~, Appeals, if it determines that the resources of
528 the political subdivision are insufficient to meet the requirements of those sections.

529 ~~[(4)]~~ (5) (a) ~~[The]~~ A political subdivision shall establish an appeals process for persons
530 aggrieved by classification, designation, or access decisions.

531 ~~[(b) The policy or ordinance shall provide for:]~~

532 ~~[(i) (A) an appeals board composed of the governing body of the political subdivision;~~
533 ~~or]~~

534 ~~[(B) a separate appeals board composed of members of the governing body and the~~
535 ~~public, appointed by the governing body, and]~~

536 ~~[(ii) the designation of a person as the chief administrative officer for purposes of~~
537 ~~determining appeals under Section [63G-2-401](#) of the governmental entity's determination.]~~

538 ~~[(5) If the requester concurs, the political subdivision may also provide for an~~
539 ~~additional level of administrative review to the records committee in accordance with Section~~
540 ~~[63G-2-403](#).]~~

541 ~~[(6) Appeals of the decisions of the appeals boards established by political subdivisions~~
542 ~~shall be by petition for judicial review to the district court.]~~

543 (b) A political subdivision's appeals process shall include a process for a requester or
544 interested party to appeal an access denial to a person designated by the political subdivision as
545 the chief administrative officer for purposes of an appeal under Section [63G-2-401](#).

546 (c) (i) A political subdivision may establish an appeals board to decide an appeal of a
547 decision of the chief administrative officer affirming an access denial.

548 (ii) An appeals board established by a political subdivision shall be composed of three
549 members:

550 (A) one of whom shall be an employee of the political subdivision; and

551 (B) two of whom shall be members of the public, at least one of whom shall have
552 professional experience with requesting or managing records.

553 (iii) If a political subdivision establishes an appeals board, any appeal of a decision of a
554 chief administrative officer shall be made to the appeals board.

555 (iv) If a political subdivision does not establish an appeals board, the political
556 subdivision's appeals process shall provide for an appeal of a chief administrative officer's
557 decision to the records committee, as provided in Section [63G-2-403](#).

558 (6) (a) A political subdivision, requester, or interested party may appeal an appeals
559 board decision:

560 (i) to the records committee, as provided in Section [63G-2-403](#); or

561 (ii) by filing a petition for judicial review with the district court.

562 (b) The contents of ~~the~~ a petition for judicial review under Subsection (6)(a)(ii) and

563 the conduct of the proceeding shall be in accordance with Sections [63G-2-402](#) and [63G-2-404](#).

564 (c) A person who appeals an appeals board decision to the records committee does not
565 lose or waive the right to seek judicial review of the decision of the records committee.

566 (7) Any political subdivision that adopts an ordinance or policy under Subsection (1)
567 shall forward to state archives a copy and summary description of the ordinance or policy.