

GOVERNMENT RECORDS AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Brad 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:

13-15-3, as last amended by Laws of Utah 2010, Chapter 278

63G-2-401, as last amended by Laws of Utah 2012, Chapter 377

63G-2-402, as renumbered and amended by Laws of Utah 2008, Chapter 382

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
138 the chief administrative officer within 30 days after:~~

139 (i) the governmental entity sends a notice of denial under Section 63G-2-205, if the
140 governmental entity denies a record request under Subsection 63G-2-205(1); or

141 (ii) the record request is considered denied under Subsection 63G-2-204(8), if that

142 subsection applies.

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

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

152 (a) the ~~[petitioner's]~~ name, mailing address, and daytime telephone number of the
153 requester or interested party; and

154 (b) the relief sought.

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

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

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

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

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

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

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

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

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

178 (ii) If the chief administrative officer fails to make a decision on an appeal under
179 Subsection (1)(b) within the time specified in Subsection (5)(a), the failure is the equivalent of
180 a decision affirming the claim of extraordinary circumstances or the reasonableness of the date
181 specified when the records will be available.

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

184 (6) Except as provided in Section 63G-2-406, the chief administrative officer may,
185 upon consideration and weighing of the various interests and public policies pertinent to the
186 classification and disclosure or nondisclosure, order the disclosure of information properly
187 classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if
188 the interests favoring access are greater than or equal to the interests favoring restriction of
189 access.

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

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

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

196 (A) the records committee or district court[;]; or

197 (B) the local appeals board, if the governmental entity is a political subdivision and the

198 governmental entity has established a local appeals board;

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

200 (iii) the name and business address of;

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

202 (B) the individual designated as the contact individual for the appeals board, if the

203 governmental entity is a political subdivision that has established an appeals board under

204 Subsection 63G-2-701(5)(c).

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

210 (9) The duties of the chief administrative officer under this section may be delegated.

211 Section 5. Section **63G-2-402** is amended to read:

212 **63G-2-402. Appealing a decision of a chief administrative officer.**

213 (1) If the decision of the chief administrative officer of a governmental entity [~~denies a~~
214 ~~records~~] under Section 63G-2-401 is to affirm the denial of a record request [~~under Section~~
215 ~~63G-2-401~~], the requester may:

216 (a) (i) appeal the [~~denial~~] decision to the records committee₂ as provided in Section
217 ~~63G-2-403~~; or

218 [~~(b)~~] (ii) petition for judicial review of the decision in district court₂ as provided in
219 Section ~~63G-2-404~~[;]; or

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

224 (b) appeal the decision to the local appeals board if:

225 (i) the decision is of a chief administrative officer of a governmental entity that is a

226 political subdivision; and

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

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

231 (3) As provided in Section 63G-2-403, an interested party may appeal to the records
232 committee a chief administrative officer's decision under Section 63G-2-401 affirming an
233 access denial.

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

235 **63G-2-403. Appeals to the records committee.**

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

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

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

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

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

250 (a) contain the ~~[petitioner's]~~ name, mailing address, and daytime telephone number of
251 the records committee appellant;

252 ~~[(b) a copy of any denial of the record request; and]~~

253 (b) be accompanied by a copy of the decision being appealed; and

254 (c) state the relief sought.

255 (3) The [~~petitioner~~] records committee appellant:

256 (a) shall, on the day on which the [~~petitioner files an appeal to~~] notice of appeal is filed
257 with the records committee, serve a copy of the notice of appeal on:

258 (i) the [~~government entity, described in Subsection (1), to which the appeal relates;~~
259 ~~and~~] governmental entity whose access denial is the subject of the appeal, if the records
260 committee appellant is a requester or interested party; or

261 (ii) the requester or interested party who is a party to the local appeals board
262 proceeding that resulted in the decision that the political subdivision is appealing to the records
263 committee, if the records committee appellant is a political subdivision; and

264 (b) may file a short statement of facts, reasons, and legal authority in support of the
265 appeal.

266 (4) (a) Except as provided in [~~Subsection~~] Subsections (4)(b) and (c), no later than
267 [~~five~~] seven business days after receiving a notice of appeal, the executive secretary of the
268 records committee shall:

269 (i) schedule a hearing for the records committee to discuss the appeal at the next
270 regularly scheduled committee meeting falling at least [~~14~~] 16 days after the date the notice of
271 appeal is filed but no longer than [~~52~~] 64 calendar days after the date the notice of appeal was
272 filed except that the records committee may schedule an expedited hearing upon application of
273 the [~~petitioner~~] records committee appellant and good cause shown;

274 (ii) send a copy of the notice of hearing to the [~~petitioner~~] records committee appellant;
275 and

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

278 (A) each member of the records committee;

279 (B) the records officer and the chief administrative officer of the governmental entity
280 [~~from which the appeal originated~~] whose access denial is the subject of the appeal, if the
281 records committee appellant is a requester or interested party;

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

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

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

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

295 (B) The committee shall make rules to implement this section as provided by Title
296 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

307 (b) The governmental entity shall send a copy of the written statement ~~[to the~~
308 ~~petitioner]~~ by first class mail, postage prepaid, to the requester or interested party involved in
309 the appeal. The executive secretary shall forward a copy of the written statement to each

310 member of the records committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

340 (A) issued under Section 63G-2-401; or

341 (B) issued by a chief administrative officer of a political subdivision that has not
342 established a local appeals board.

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

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

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

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

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

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

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

359 (ii) business confidentiality interests in the case of a record protected under Subsection
360 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

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

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

366 information;

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

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

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

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

380 (14) A party to a proceeding before the records committee may seek judicial review in
381 district court of a records committee order by filing a petition for review of the records
382 committee order as provided in Section [63G-2-404](#).

383 ~~[(14)]~~ (15) (a) Unless a notice of intent to appeal is filed under Subsection ~~[(14)]~~
384 (15)(b), each party to the proceeding shall comply with the order of the records committee.

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

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

390 (i) produce the record; and

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

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

394 the following:

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

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

397 (I) the governor for executive branch entities;

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

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

400 (ii) In imposing a civil penalty, the records committee shall consider the gravity and

401 circumstances of the violation, including whether the failure to comply was due to neglect or

402 was willful or intentional.

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

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

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

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

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

411 ~~[(e)]~~ (b) The records committee is a necessary party to [the] a petition for judicial
412 review of a records committee order.

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

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

418 ~~[(b) The requester shall file a petition no later than:]~~

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

421 ~~[(ii) 35 days after the original request if the governmental entity failed to respond to the~~

422 request, or]

423 [~~(iii)~~ 45 days after the original request for records if;]

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

425 [~~(B)~~ the chief administrative officer failed to make a determination under Section

426 ~~63G-2-401~~.]

427 [~~(3)~~ The] (2) A petition for judicial review ~~[shall be]~~ is a complaint governed by the

428 Utah Rules of Civil Procedure and shall contain:

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

430 (b) a copy of the records committee order from which the appeal is taken, if the

431 petitioner ~~[brought a prior appeal to the]~~ is seeking judicial review of an order of the records

432 committee;

433 (c) the name and mailing address of the governmental entity that issued the initial

434 determination with a copy of that determination;

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

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

437 [~~(4)~~] (3) If the appeal is based on the denial of access to a protected record based on a

438 claim of business confidentiality, the court shall allow the claimant of business confidentiality

439 to provide to the court the reasons for the claim of business confidentiality.

440 [~~(5)~~] (4) All additional pleadings and proceedings in the district court are governed by

441 the Utah Rules of Civil Procedure.

442 [~~(6)~~] (5) The district court may review the disputed records. The review shall be in

443 camera.

444 [~~(7)~~] (6) The court shall:

445 (a) make its decision de novo, but, for a petition seeking judicial review of a records

446 committee order, allow introduction of evidence presented to the records committee;

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

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

449 [~~(8)~~] (7) (a) Except as provided in Section ~~63G-2-406~~, the court may, upon

450 consideration and weighing of the various interests and public policies pertinent to the
451 classification and disclosure or nondisclosure, order the disclosure of information properly
452 classified as private, controlled, or protected if the interest favoring access is greater than or
453 equal to the interest favoring restriction of access.

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

459 Section 8. Section 63G-2-501 is amended to read:

460 **63G-2-501. State Records Committee created -- Membership -- Terms --**
461 **Vacancies -- Expenses.**

462 (1) There is created the State Records Committee within the Department of
463 Administrative Services to consist of the following seven individuals:

464 (a) an individual in the private sector whose profession requires the individual to create
465 or manage records that if created by a governmental entity would be private or controlled;

466 (b) the director of the Division of State History or the director's designee;

467 (c) the governor or the governor's designee;

468 (d) two citizen members;

469 (e) one ~~[elected official]~~ person representing political subdivisions, as recommended
470 by the Utah League of Cities and Towns; and

471 (f) one individual representing the news media.

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

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

477 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the

478 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
479 committee members are staggered so that approximately half of the committee is appointed
480 every two years.

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

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

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

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

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

488 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
489 [63A-3-107](#).

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

491 **63G-2-701. Political subdivisions may adopt ordinances in compliance with**
492 **chapter -- Appeal process.**

493 (1) As used in this section:

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

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

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

497 [(+)] (2) (a) Each political subdivision may adopt an ordinance or a policy applicable
498 throughout its jurisdiction relating to information practices including classification,
499 designation, access, denials, segregation, appeals, management, retention, and amendment of
500 records.

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

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

504 (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision
505 is subject to ~~[Parts 1 and 3]~~ Part 1, General Provisions, Part 3, Classification, and Sections

506 63A-12-105, 63A-12-107, 63G-2-201, 63G-2-202, 63G-2-205, 63G-2-206, 63G-2-601, and
507 63G-2-602.

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

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

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

519 ~~[(2)]~~ (3) Each ordinance or policy relating to information practices shall:

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

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

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

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

529 ~~[(3)]~~ (4) (a) Each ordinance or policy shall establish access criteria, procedures, and
530 response times for requests to inspect, obtain, or amend records of the political subdivision,
531 and time limits for appeals consistent with this chapter.

532 (b) In establishing response times for access requests and time limits for appeals, the
533 political subdivision may establish reasonable time frames different than those set out in

534 Section [63G-2-204](#) and Part 4 ~~[of this chapter]~~, Appeals, if it determines that the resources of
535 the political subdivision are insufficient to meet the requirements of those sections.

536 ~~[(4)]~~ (5) (a) [The] A political subdivision shall establish an appeals process for persons
537 aggrieved by classification, designation, or access decisions.

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

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

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

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

545 ~~[(5) If the requester concurs, the political subdivision may also provide for an~~
546 ~~additional level of administrative review to the records committee in accordance with Section~~
547 ~~[63G-2-403](#).]~~

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

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

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

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

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

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

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

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

565 (6) (a) A political subdivision or requester may appeal an appeals board decision:

566 (i) to the records committee, as provided in Section 63G-2-403; or

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

568 (b) The contents of [the] a petition for judicial review under Subsection (6)(a)(ii) and
569 the conduct of the proceeding shall be in accordance with Sections 63G-2-402 and 63G-2-404.

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

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