

## **Legislative Management Committee Policy L -- Legislative Records**

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### **Part 1. General Provisions**

#### **Section L-101. Basis of policy -- Superseding previous policies.**

(1) This policy is adopted pursuant to Utah Code Section 63G-2-703, which broadly gives the Legislature, through the Legislative Management Committee, authority to establish policies relating to "requests for classification, designation, fees, access, denials, segregation, appeals, management, retention, and amendment of records" and to establish "an appellate board to hear appeals from denials of access."

(2) This policy supersedes and replaces the Utah Legislature Policies and Procedures for Handling Records Requests and any other previous policy relating to legislative records.

#### **Section L-102. Definitions.**

As used in this policy:

(1)(a) "Accepted record request" means a record request:

(i) that is not rejected under Section L-203 or L-205; and

(ii) for which the requester has paid the applicable filing fee, if the record request is an out-of-state request or an over-the-threshold request.

(b) "Accepted record request" does not include a record request that a legislative office is not required to respond to or fill under GRAMA or this policy.

(2)(a) "Access denial" means a legislative office's denial of access to a record:

(i) based on the record's classification as private, controlled, or protected; or

(ii) because access to the record is limited pursuant to a court order or rule, another state statute, or federal statute or regulation.

(b) "Access denial" does not include:

(i) a legislative office's failure to provide access to a record because:

(A) the legislative office does not retain the record;

(B) the legislative office does not retain a record that is responsive to the request;

or

(C) under GRAMA or this policy, the legislative office is not required to respond to or fill the record request;

(ii) the rejection of a record request under Section L-203 or L-205;

(iii) a legislative office's not accepting a record request under Subsection L-203(3) because the record request is not accompanied by the applicable filing fee; or

(iv) the denial of a fee waiver request.

(3) "Business day" means a day other than Saturday, Sunday, or a state or federal holiday.

(4) "Chief officer" means:

(a) for the Utah Senate, the president of the Senate or the president's designee;

(b) for the Utah House of Representatives, the speaker of the House of Representatives or the speaker's designee;

(c) for the Office of Legislative Research and General Counsel, the director of the Office of Legislative Research and General Counsel or the director's designee;

(d) for the Office of the Legislative Fiscal Analyst, the Legislative Fiscal Analyst or the Legislative Fiscal Analyst's designee;

(e) for the Office of the Legislative Auditor General, the Legislative Auditor General or the Legislative Auditor General's designee; or

(f) for a legislative staff office providing service to the legislative branch, other than an office listed in Subsection (4)(c), (d), or (e), the individual designated jointly by a representative from each of the other legislative offices.

(5) "Complimentary time" means staff time that a legislative office:

(a) spends in responding to an in-state request; and

(b) does not charge a fee for, consistent with the fee schedule attached to this policy as Appendix B.

(6) "Confidential business record" means a record:

(a) described in Utah Code Subsection 63G-2-305(1) or (2);

(b) for which a legislative office receives a written statement as provided in Subsection L-103(3); and

(c) that the legislative office classifies as protected.

(7) "Controlled" means a classification given to a record based on Utah Code Section 63G-2-304.

(8) "Effective filing date" is the date on which a record request that is not rejected under Section L-203 or L-205 is received by the records coordinator.

(9) "Fee waiver denial override request" means a request under Subsection L-302(9) asking for the denial of a fee waiver request to be overridden.

(10) "Fee waiver request" means a request under Section L-302 for the waiver of a response fee.

(11) "Governmental entity" means the same as that term is defined in Section 63G-2-103.

(12) "GRAMA" means Utah Code Title 63G, Chapter 2, Government Records Access and Management Act.

(13) "Individual" means a human being.

(14) "In-state request" means a record request submitted by an in-state resident.

(15) "In-state resident" means a person:

(a) who, if an individual, is a legal resident of the state or is domiciled in the state;

or

(b) that, if a person other than an individual, has its principal place of business or principal operations in the state.

(16)(a) "Legislative office" means:

(i) the Utah Senate;

(ii) the Utah House of Representatives;

(iii) the Office of Legislative Research and General Counsel;

(iv) the Office of the Legislative Fiscal Analyst;

(v) the Office of the Legislative Auditor General; or

(vi) any other legislative staff office providing service to the legislative branch.

(b) "Legislative office" does not include:

(i) a political party, group, or caucus; or

(ii) a rules or sifting committee of the Legislature.

(17) "Legislative Records Committee" means a committee comprised of the president and minority leader of the Utah Senate and the speaker and minority leader of the Utah House of Representatives.

(18)(a) "Media outlet" means a bona fide newspaper, magazine, or broadcast media enterprise, whether conducted on a for-profit or nonprofit basis, engaged in the business of providing news and information to the general public.

(b) "Media outlet" does not include a blog, podcast, social media account, or other means of mass communication generally available to a member of the public.

(19) "Over-the-threshold request" means an in-state request submitted by a person, other than a Utah media outlet or an individual employed by and acting on behalf of a Utah media outlet, to a legislative office:

(a) in a calendar month during which the person has already submitted two record requests to that legislative office; or

(b) in a calendar year during which the person has already submitted six record requests to that legislative office.

(20) "Out-of-state request" means a record request submitted by a person other than an in-state resident.

(21) "Person" means the same as that term is defined in Utah Code Section 63G-2-103.

(22) "Private" means a classification given to a record based on Utah Code Section 63G-2-303 or 63G-2-304.

(23) "Protected" means a classification given to a record based on Utah Code Section 63G-2-305 or other applicable law.

(24) "Public" means a classification given to a record:

(a) that is not classified as controlled, private, or protected; and

(b) access to which is not limited pursuant to a court order or rule, another state statute, or federal statute or regulation.

(25) "Record" means the same as that term is defined in Utah Code Section 63G-2-103.

(26) "Record request" means a written request seeking access to a record.

(27) "Record request nonresponse" means a records coordinator's lack of response to an accepted record request within the time provided in Subsection L-204(2).

(28) "Records coordinator" means:

(a) an individual designated by the Legislative Management Committee to perform the functions and duties of the records coordinator under this policy, if the Legislative Management Committee designates an individual to perform those functions and duties for all legislative offices; or

(b) an individual designated for each legislative office by that legislative office's chief officer to perform the functions and duties of the records coordinator under this policy, if the Legislative Management Committee does not designate an individual to perform those functions and duties for all legislative offices.

(29) "Requester" means a person who submits a record request to a records coordinator as provided in this policy.

(30) "Response fee" means the total of all fees described in Appendix B that a legislative office is authorized or required to charge a requester for responding to a record request, other than a filing fee described in Appendix B for an over-the-threshold request or out-of-state request.

(31) "Review officer" means:

(a) an individual designated by the Legislative Management Committee to review access denials, record request nonresponses, and fee waiver denial override requests for all legislative offices, if the Legislative Management Committee designates an individual to perform those functions for all legislative offices; or

(b) an individual designated for each legislative office by that legislative office's chief officer to review access denials, record request nonresponses, and fee waiver denial override requests for that legislative office, if the Legislative Management Committee does not designate an individual to perform those functions for all legislative offices.

(32) "Review request" means a request described in Section L-401 seeking review of a records coordinator's access denial or a record request nonresponse as part of an overall appeal process.

**Section L-103. Record classification.**

(1)(a) A legislative office is not required to classify a record before receiving and responding to an accepted record request for that record.

(b) As provided in GRAMA and this policy, a legislative office may classify a record as public, private, controlled, or protected.

(2)(a) A legislative office classifies or reclassifies a record through the legislative office's records coordinator, review officer, or chief officer, as provided in this Subsection (2).

(b) Upon receiving a record request, a records coordinator may classify a record on behalf of the legislative office to which the record request was submitted.

(c) A review officer may:

(i) classify a record that is the subject of a review request, if the records coordinator has not previously classified the record; or

(ii) reclassify a record that is the subject of the review request, if the records coordinator has previously classified the record.

(d)(i) A chief officer may classify or reclassify, or may direct a records coordinator or review officer to classify or reclassify, a record on behalf of the chief officer's legislative office at any time.

(ii) A chief officer's classification or reclassification of a record supersedes a classification of the record made by a records coordinator or review officer.

(3) A legislative office may classify a record as protected under Utah Code Subsection 63G-2-305(1) or (2) if the person from whom the legislative office receives the record provides with the record a written statement:

(a) that identifies the record as a trade secret or commercial or nonindividual financial information under Utah Code Subsection 63G-2-305(1) or (2);

(b) that includes a concise explanation of the reasons supporting the statement that the record is a trade secret or commercial or nonindividual financial information under Utah Code Subsection 63G-2-305(1) or (2);

(c) in which the person:

(i) releases the Legislative Records Committee, the Utah Legislature, and all members, staff, and employees of the Utah Legislature from any and all responsibility, claims, liability, and damages resulting or arising from a release of the record under Subsection L-505(1)(b)(iii);

(ii) covenants not to sue or otherwise assert a claim against the Legislative Records Committee, the Utah Legislature, or any member, staff, or employee of the Utah Legislature if the suit or claim is based in any way on a release of the record under Subsection L-505(1)(b)(iii); and

(iii) agrees to protect, defend, and indemnify the legislative office that retains the record, the Utah Legislature, and all members, staff, and employees of the Utah Legislature from and against any claims, liability, or damages resulting or arising from a denial of access to the record as a protected record.

(4) A legislative office may classify a draft of legislation as a protected record based on its status as a draft even though the sponsor makes or directs the making of a limited distribution of the draft for the purpose of allowing review of and receiving comment on the draft as part of the sponsor's deliberative process in connection with the preparation of legislation.

(5) A legislative office may classify as private, controlled, or protected information contained in a record otherwise classified as public if the information reveals the content of a record classified as private, controlled, or protected.

(6)(a) Subject to Subsection (6)(b), the Legislative Records Committee may reclassify a record that is the subject of an appeal under Part 5, Appeal to Legislative Records Committee.

(b)(i) The Legislative Records Committee may reclassify a confidential business record as public only with the approval of the person who submitted the record.

(ii) Subsection (6)(b)(i) does not prevent the Legislative Records Committee from releasing a confidential business record as provided in Subsection L-505(1)(b)(iii).

**Section L-104. Record retention.**

(1) The retention schedule attached as Appendix A is incorporated into this policy and governs a legislative office's retention and disposal of records, subject to the allocation of retention responsibility under Subsection (3).

(2)(a) A specified period of time provided for a record in the retention schedule means that a legislative office:

(i) is required to retain the record for the specified period of time, subject to Subsection (3)(c); and

(ii) may dispose of the record after the expiration of the specified period of time.

(b) A legislative office:

(i) is not required to dispose of a record upon the expiration of the specified period of time provided for that record in the retention schedule; and

(ii) may continue to retain the record for as long as the legislative office has an administrative need for the record.

(3)(a) The legislative office that generates or produces a record is responsible for, as applicable:

(i) the retention of the record in accordance with this section and the retention schedule; or

(ii) the transmission of the record to the Division of Archives for the record's retention and preservation by the Division of Archives, as provided in Utah Code Section 63A-12-102.5.

(b) With respect to a record not described in Subsection (3)(a), the chiefs of staff of the Senate and House of Representatives and the directors of the legislative staff offices shall consult together and allocate responsibility and implement any protocol or process necessary to ensure the retention of records according to this section and the retention schedule.

(c) A legislative office may:

(i) retain and preserve a record for the period of time specified under Appendix A;  
or

(ii) transmit a record to the Division of Archives for retention and preservation as provided in Utah Code Section 63A-12-102.5.



(4) Retention of a record may be by any means, including electronic, that allows access to and retrieval of the record in essentially its original format.

**Section L-105. When a record request, fee waiver denial override request, review request, or notice of appeal is considered submitted and received -- Amended requests or notices of appeal.**

(1) As used in this section:

(a) "Applicable filing" means a record request, fee waiver denial override request, review request, or notice of appeal.

(b) "Relevant officer or committee" means:

(i) with respect to a record request, the records coordinator;

(ii) with respect to a fee waiver denial override request, the review officer;

(iii) with respect to a review request, the review officer; and

(iv) with respect to a notice of appeal, the Legislative Records Committee.

(2) Subject to Subsection (4), an applicable filing is considered submitted on the day the applicable filing is received by the relevant officer or committee.

(3)(a) If a person submits an applicable filing and later submits an amended applicable filing, the applicable filing is considered submitted on the day the amended applicable filing is received by the relevant officer or committee, subject to Subsection (4).

(b)(i) An amended record request is invalid and without effect and may be disregarded by the records coordinator if the amended record request is submitted after the records coordinator has, under Section L-204, responded in writing to the accepted record request sought to be amended, granting or denying the record request or indicating that the legislative office does not retain any records that are responsive to the record request.

(ii) An amended review request received after the review officer has provided a written response under Section L-402 to the review request sought to be amended is invalid and without effect and may be disregarded by the review officer.

(iii) An amended notice of appeal received after the Legislative Records Committee has issued a statement under Section L-505 on the appeal that is the

subject of the notice of appeal sought to be amended is invalid and without effect and may be disregarded by the Legislative Records Committee.

(4) An initial or amended applicable filing submitted on a day that is not a business day or after 5:00 p.m. on a business day is considered to be submitted on the next business day.

## **Part 2. Record Requests**

### **Section L-201. Written record request -- Exception.**

(1) A legislative office may provide a person access to a record as provided in this policy only if the person submits a written request to the legislative office requesting access to the record.

(2) Notwithstanding Subsection (1), a legislative office may provide a person access to a public record without a written request if:

(a) the record:

(i) was previously distributed publicly at a legislative meeting;

(ii) is a notice, agenda, or other material relating to a legislative meeting, routinely published or made publicly available by a legislative office; or

(iii) has already been generally distributed to the public at large; or

(b) the chief officer of the legislative office concludes that the legislative office's convenience and efficiency are best served by providing access to the record without a written request.

(3) Nothing in this policy may be construed to limit the routine sharing of documents and information in the normal course of business conducted by the legislative office.

### **Section L-202. Record request requirements.**

(1) A record request shall:

(a) be submitted on a form approved and made available by the legislative office;

(b) contain:

(i) the name and mailing address of the requester;

(ii) if the record request is submitted by an entity, the name of the entity's contact individual;

(iii) the daytime telephone number of the requester or, if the record request is submitted by an entity, the daytime telephone number of the entity's contact individual; and

(iv) the email address of the requester or, for a record request submitted by an entity, the email address of the entity's contact individual, if the requester indicates that the requester is willing to accept communications regarding the record request by email; and

(c) specify the legislative office that the requester believes to be the office that retains the record.

(2)(a) A legislative office shall require a person submitting a record request that the person intends to be an in-state request to certify that the person:

(i) is an in-state resident; and

(ii) submits the record request on the person's own behalf and not on behalf of or for a person who is not an in-state resident.

(b) A record request that does not contain the certification under Subsection (2)(a) is considered to be an out-of-state request.

(3) (a) A record request shall contain a description of the record requested that identifies the record with reasonable specificity.

(b) The requirement of reasonable specificity under Subsection (3)(a) is not met if the records coordinator is unable to readily determine from the face of the record request the record being requested.

**Section L-203. Rejecting a record request -- Timeline -- Failure to pay filing fee.**

(1)(a) A records coordinator may reject a record request that does not comply with the requirements of Subsection L-202(1).

(b) If a records coordinator rejects a record request under Subsection (1)(a), the records coordinator shall notify the requester in writing of the rejection and the reason for the rejection.

(c)(i) A record request is considered to have complied with the requirements of Subsection L-202(1) at the time the records coordinator received the record request if the records coordinator does not notify the requester of the rejection under Subsection (1)(a) within:

(A) three business days after the records coordinator receives the record request, if the response time under Subsection L-204(2)(a)(i)(A) applies, or six business days after the records coordinator receives the record request, if the response time under Subsection L-204(2)(a)(i)(B) applies; or

(B) a period of time that is longer than the period described in Subsection (1)(c)(i)(A), if the requester and records coordinator agree to the longer period of time.

(ii) Subsection (1)(c)(i) does not apply to a record request that a legislative office is not required to respond to or fill under GRAMA or this policy.

(2)(a) A records coordinator may reject a record request if:

(i) the record request does not comply with the reasonable specificity requirement of Subsection L-202(3); or

(ii) the records coordinator has reason to believe that the requester's name indicated on the record request form is not the actual name of the requester.

(b) If a records coordinator rejects a record request under Subsection (2)(a), the records coordinator shall, within the same time limit that applies to a response to an accepted record request under Section L-204, notify the requester in writing of the rejection and the reason for the rejection.

(3)(a) A legislative office may not accept an out-of-state request or an over-the-threshold request unless the record request is accompanied by the applicable filing fee.

(b) If a legislative office is unable to accept a record request under Subsection (3)(a), the records coordinator shall promptly notify the requester:

(i) that the legislative office is unable to accept the record request because of the requester's failure to pay the applicable filing fee; and

(ii) of the amount of the applicable filing fee.

(c) A requester is considered to have withdrawn the requester's record request if the requester fails to pay the applicable filing fee within 10 business days after the records coordinator notifies the requester under Subsection (3)(b) of the filing fee.

**Section L-204. Response to record request -- Record request nonresponse.**

(1) A records coordinator shall respond in writing to an accepted record request as soon as reasonably possible, but no later than the time period described in this section.

(2)(a) The time for a response under Subsection (1) is:

(i)(A) five business days after the effective filing date, if the requester requests an expedited response and adequately demonstrates that an expedited response benefits the Utah public rather than the requester; or

(B) except as provided in Subsection (2)(a)(i)(A), 10 business days after the effective filing date;

(ii) the applicable period described in Subsection (3)(d), if Subsection (3)(a) applies; or

(iii) a period different than the period described in Subsection (2)(a)(i) or (ii) if the requester and records coordinator agree to the different period of time.

(b)(i) A records coordinator shall determine whether, in the records coordinator's reasonable judgment, a requester that has requested an expedited response under Subsection (2)(a)(i)(A) has adequately demonstrated that an expedited response benefits the Utah public rather than the requester.

(ii) A requester's declaration that an expedited response benefits the Utah public rather than the requester does not alone make the demonstration of public benefit required to support an expedited response under Subsection (2)(a)(i)(A).

(iii) An expedited response under Subsection (2)(a)(i)(A) is presumed to benefit the Utah public rather than the requester if the requester is seeking access to the requested record for a time-sensitive story or time-sensitive report that the requester is working on for a publication or broadcast to the general public by a Utah media outlet.

(iv) A records coordinator's determination under this Subsection (2)(b) is final.

(3)(a) A records coordinator may respond to an accepted record request after the time period specified in Subsection (2)(a)(i) but within the time period specified in

Subsection (3)(d) if the records coordinator determines that a circumstance prevents the records coordinator from responding within the time specified in Subsection (2)(a)(i).

(b) A circumstance under Subsection (3)(a) may include when:

(i) another governmental entity is using the requested record;

(ii)(A) another governmental entity is using the requested record as part of an audit; and

(B) returning the record before the completion of the audit would impair the conduct of the audit;

(iii) the request is for a voluminous quantity of records;

(iv) the requester has submitted multiple record requests within five working days of each other seeking a substantial number of records;

(v) the legislative office is currently processing a large number of record requests;

(vi) responding to the record request requires the legislative office to review a large number of records to locate the records requested;

(vii) the decision to provide access to a record involves a legal issue that requires the legislative office to seek legal counsel for the analysis of statute, rule, ordinance, regulation, or case law; or

(viii) segregating information to which the requester is entitled to have access from information to which the requester is not entitled to have access requires:

(A) extensive redacting or editing; or

(B) computer programming.

(c) If a records coordinator relies on Subsection (3)(b)(i) or (ii) for additional time to respond to an accepted record request, the records coordinator shall promptly request the other governmental entity to return the record:

(i) within five business days, for a record under Subsection (3)(b)(i); or

(ii) as soon as the governmental entity no longer needs the record for audit purposes, for a record under Subsection (3)(b)(ii).

(d) If Subsection (3)(a) applies, a records coordinator shall respond to the record request:

(i) within five business days after the legislative office receives the record from the other governmental entity, for a circumstance described in Subsection (3)(b)(i) or (ii); or

(ii) except as provided in Subsection (3)(d)(i):

(A) for a record request to which an expedited response time applies, within five business days after the expiration of the time specified in Subsection (2)(a)(i)(A); or

(B) for any other record request, within 10 business days after the expiration of the time specified in Subsection (2)(a)(i)(B).

(e) If Subsection (3)(a) applies, the records coordinator shall, within the time specified in Subsection (2)(a)(i), notify the requester in writing:

(i) that the records coordinator will not respond to the record request within the time specified in Subsection (2)(a)(i);

(ii) of the circumstance that the records coordinator relies on for additional time to respond; and

(iii) of the estimated date the records coordinator anticipates responding to the record request.

(4) A records coordinator shall:

(a) deny an accepted record request if and to the extent that:

(i) the record to which access is sought is classified by the legislative office as private, controlled, or protected; or

(ii) access to the record is limited pursuant to a court order or rule, another state statute, or federal statute or regulation; or

(b) subject to the requirements of GRAMA and this policy, grant an accepted record request and provide access to the requested record if and to the extent that the record to which access is sought is classified by the legislative office as public.

(5) A records coordinator shall:

(a) deny an accepted record request to the extent that the record request seeks access to a confidential business record; and

(b) send the person from whom the legislative office received the confidential business record a written notice informing the person of the record request and the records coordinator's denial.

(6) If a records coordinator's written response includes an access denial, the response shall:

(a) cite the provision of law that provides the basis for the classification of the record as other than public;

(b) provide a brief summary description of the record to which access is denied, without disclosing any information that would reveal the substantive content of the record; and

(c) include information on the filing of a review request under Section L-401, including:

(i) the time limit for filing a review request; and

(ii) the name, business address, and business email address of the review officer.

(7) A records coordinator is considered to have not responded to an accepted record request if the records coordinator does not respond to the request within the applicable time specified in Subsection (2).

(8) The applicable time period described in Subsection (2) is suspended for a period of time that:

(a) begins the day on which the records coordinator:

(i) sends notice of a response fee to the requester under Subsection L-301(3)(b);

or

(ii) notifies a requester under Subsection L-301(5) of an additional response fee;

and

(b) ends at the end of the day on which:

(i) the records coordinator receives payment of the response fee or additional response fee, as applicable; or

(ii) the records coordinator or review officer grants a fee waiver request under Section L-302 waiving the required response fee or additional response fee.

**Section L-205. Record received from another governmental entity.**

(1) A legislative office is considered not to have prepared and not to own or retain a record that the legislative office receives from another governmental entity if:



(a) the record is not a communication between the other governmental entity and the legislative office; and

(b)(i) the other governmental entity has classified the record with a classification other than public and has notified the legislative office of that classification; or

(ii) the legislative office is uncertain of how the other governmental entity has classified or would classify the record.

(2) If a legislative office receives a record request for a record described in Subsection (1), the records coordinator shall:

(a) reject the record request; and

(b) inform the requester of the identity of the governmental entity from which the legislative office received the record.

**Section L-206. Providing access to a record despite its classification as protected.**

In response to a record request, a legislative office may provide access to a record that a legislative office has classified as protected, other than a confidential business record, if the chief officer of the legislative office that retains the record determines that the interests favoring access are greater than or equal to the interests favoring a denial of access.

**Part 3. Fees for Responding to a Record Request**

**Section L-301. Fee required -- Exception.**

(1)(a) Subject to Subsection (1)(b), and in addition to any applicable filing fee required under the fee schedule in Appendix B, a legislative office shall charge a requester a response fee, according to the fee schedule in Appendix B, for responding to the requester's record request.

(b) A legislative office may not charge a response fee for responding to an in-state request if, in responding to the record request, the legislative office:

(i) does not spend staff time that exceeds complimentary time; and

(ii) will not incur any other costs or will incur only nominal costs.

(2)(a) The fee schedule in Appendix B is incorporated into this policy.

(b) The Office of Legislative Research and General Counsel shall adjust the amount of the fee for staff time under Appendix B every five years based on changes in the chained CPI and rounded to the nearest five dollars.

(3) If a legislative office charges a response fee, the legislative office shall:

(a) estimate the amount of the response fee; and

(b) notify the requester of the amount of the estimated response fee.

(4)(a) In estimating the amount of the response fee to charge a requester, a legislative office may conduct or direct a preliminary search for and review of records to gain a general understanding of the volume of records likely to be responsive to the record request and to estimate the amount of staff time that will likely be required to identify, gather, classify, and segregate records in response to the record request.

(b) A legislative office may include staff time spent in a preliminary search for and review of records under Subsection (4)(a) in the calculation of the response fee to charge a requester.

(5)(a) If the amount a requester pays pursuant to an estimated response fee under this section is inadequate to cover the actual staff time spent and costs incurred responding to a record request, a legislative office may, before continuing to work on responding to the record request, require a requester to pay an additional response fee to cover the estimated additional staff time and costs.

(b) If the estimated response fee a requester pays exceeds the amount needed to cover actual staff time spent and costs incurred responding to a record request, the legislative office shall promptly refund the excess response fee to the requester.

(6)(a) A requester is considered to have withdrawn the requester's record request if the requester fails to pay the estimated response fee within:

(i) 10 business days after the legislative office notifies the requester of the initial estimated response fee under Subsection (3)(b); or

(ii) if later than the period specified in Subsection (6)(a)(i), 10 business days after, as applicable:

(A) the denial of a fee waiver request under Section L-302; or

(B) a review officer declines to override the denial of a fee waiver request under Subsection L-302(9).

(b) The records coordinator shall respond to the requester's record request and provide access to public records to the extent practicable consistent with the amount of staff time covered by the requester's response fee payment, if a requester fails to pay an additional response fee under Subsection (5)(a) within:

(i) 10 business days after the legislative office notifies the requester of the additional response fee; or

(ii) if later than the period specified in Subsection (6)(b)(i), 10 business days after, as applicable:

(A) the denial of a fee waiver request under Section L-302; or

(B) a review officer declines to override the denial of a fee waiver request under Subsection L-302(9).

(7) If a legislative office determines that a person has falsely certified information under Subsection L-202(2)(a)(i) or (ii), the legislative office may charge the person all fees in Appendix B that are applicable to an out-of-state request for any record request submitted by the person during the period that ends one year after the false certification.

(8) With respect to an action of a legislative office under this section, a legislative office may act through:

(a) its records coordinator, in the context of the records coordinator's consideration of a record request;

(b) its review officer, in the context of the review officer's consideration of a review request of a record request nonresponse; or

(c) its chief officer.

### **Section L-302. Fee waiver.**

(1) A records coordinator may grant a fee waiver request only as provided in this section.

(2) A person who has submitted an accepted record request and has been charged a response fee or additional response fee under Section L-301 may request a

waiver of the response fee or additional response fee by submitting to the records coordinator a written fee waiver request.

(3)(a) A fee waiver request shall:

(i) be submitted:

(A) separate from the accepted record request that is the subject of the response fee for which a waiver is sought; and

(B) on a form that the legislative office approves and makes available; and

(ii) contain:

(A) the name and mailing address of the requester;

(B) if the fee waiver request is submitted by an entity, the name of the entity's contact individual;

(C) the daytime telephone number of the requester or, if the requester is an entity, the daytime telephone number of the entity's contact individual;

(D) the email address of the requester or, for a fee waiver request submitted by an entity, the email address of the entity's contact individual, if the requester indicates that the requester is willing to accept communications regarding the fee waiver request by email;

(E) a clear reference to the requester's record request that allows the records request for which a fee waiver is being requested to be readily identified; and

(F) an explanation of the circumstances that the requester believes justify a waiver of the response fee.

(b) A request for a waiver of a response fee or additional response fee that does not comply with the requirements of Subsection (3)(a) is invalid and without effect.

(4) A fee waiver request that complies with the requirements of Subsection (3)(a) and is submitted before the legislative office charges a response fee or additional response fee, as the case may be, under Section L-301 is considered submitted on the day that the legislative office notifies the requester of the amount of the estimated response fee or additional response fee, respectively, under Section L-301.

(5) A records coordinator may partially or fully grant a fee waiver request and waive some or all of a response fee or additional response fee only if the requester demonstrates to the satisfaction of the records coordinator that:

(a) in light of all applicable circumstances, requiring the requester to pay the response fee or additional response fee would place an unusually undue burden on the requester;

(b) the benefit to the Utah public derived from responding to the accepted record request and providing access to the requested records without payment of the response fee or additional response fee substantially outweighs the interest in recovering the response fee or additional response fee to cover some of the cost to the public of the legislative office responding to the accepted record request; or

(c) there are other extraordinary circumstances justifying a waiver.

(6) A records coordinator's lack of response to a fee waiver request within five business days after the fee waiver request is submitted constitutes a denial of the fee waiver request.

(7) A denial of a fee waiver request is not a denial of access to a record.

(8) Unless overridden by a review officer as provided in Subsection (9), a records coordinator's denial of a fee waiver request stands and is final.

(9)(a) A requester whose fee waiver request has been denied may submit a written fee waiver denial override request to the review officer within five business days after the denial of the fee waiver request.

(b) A fee waiver denial override request under Subsection (9)(a) is considered declined and the denial of the fee waiver request stands unless the review officer overrides the denial within five business days after the request is submitted.

(c) After a timely fee waiver denial override request is submitted under Subsection (9)(a), a review officer may:

(i) override the denial and grant some or all of the fee waiver request, based on the requester's demonstration under Subsection (5);

(ii) affirmatively decline the request; or

(iii) choose not to respond to the request.

(d) If a fee waiver denial override request is declined or considered declined under this Subsection (9):

(i) the denial of the fee waiver request stands and is final; and

(ii) the review officer's action to decline or to choose not to respond to the fee waiver denial override request is final.

#### **Part 4. Review of Access Denial or Record Request Nonresponse**

##### **Section L-401. Review request.**

(1)(a) A requester may seek review of a records coordinator's access denial or a record request nonresponse if the requester submits a review request to the review officer as provided in this section.

(b) An attempt to seek review of an action or inaction that is neither an access denial nor a record request nonresponse is invalid and without effect.

(2) A review officer may not accept a review request or conduct a review of an access denial or a record request nonresponse unless:

(a) the review request is submitted to the review officer no later than 15 business days after, as applicable:

(i) the date of the access denial; or

(ii) the date that the records coordinator is considered to have not responded to the requester's record request under Subsection L-204(7); and

(b) the review request complies with the other requirements of this section.

(3) A review request shall:

(a) contain:

(i) the name, mailing address, and daytime telephone number of the requester;

(ii) if the review request is submitted by an entity, the name of the entity's contact individual;

(iii) the email address of the requester or, for a review request submitted by an entity, the email address of the entity's contact individual, if the requester indicates that the requester is willing to accept communications regarding the review by email;

(iv) an explanation of the basis of the review request; and

(v) a statement of the action the requester wants the review officer to take; and

(b) be accompanied by a copy of:

(i) the accepted record request as to which the access denial or record request nonresponse relates; and

(ii)(A) the records coordinator's written response that contains the access denial that is the subject of the review request, if the records coordinator provided a written response denying access to the record; or

(B) a statement that the records coordinator is considered to have not responded to the accepted record request under Subsection L-204(7), including the date that the records coordinator is considered to have not responded, if the requester seeks review of a records request nonresponse.

(4) If a review request based on a record request nonresponse is submitted before the expiration of the time for the records coordinator to respond to the record request under Section L-204:

(a) the review request is invalid and without effect; and

(b) a review officer shall disregard and may not accept the review request.

**Section L-402. Review by review officer of an access denial or record request nonresponse -- Response.**

(1)(a) Except as provided in Subsection (1)(b), a review officer who receives a review request that complies with the requirements of Section L-401 shall review the records coordinator's access denial or the records request nonresponse and provide a written response to the requester, as provided in this section.

(b) If a review request based on a record request nonresponse is submitted relating to a record request that is not an accepted record request because the requester has not paid the required filing fee:

(i) the review request is invalid and without effect; and

(ii) the review officer shall:

(A) disregard the review request; and

(B) direct the records coordinator to notify the requester as provided in Subsection L-203(3)(b).

(2)(a) Upon review of a records coordinator's access denial, a review officer may:

(i) reaffirm the access denial and allow the access denial to stand; or

(ii) except as provided in Subsection (2)(b), override the access denial and provide to the requester the record that is the subject of the access denial if:

(A) the review officer concludes that the classification upon which the records coordinator's access denial was based is erroneous and that the record should properly be classified as public;

(B) the review officer reclassifies the record as public; or

(C) the chief officer of the legislative office that retains the record determines that the interests favoring access are greater than the interests favoring a denial of access.

(b) A review officer may not override an access denial relating to a confidential business record without the consent of the person from whom the legislative office received the confidential business record.

(3)(a) Upon review of a record request nonresponse under a review request that is not invalid under Subsection (1)(b), a review officer shall, subject to Subsection (3)(b), process the record request that is the subject of the record request nonresponse in accordance with Sections L-202, L-203, L-204, L-205, and L-206 and Part 3, Fees for Responding to a Record Request, as though the review officer were the records coordinator and the record request were an accepted record request.

(b) With respect to the process described in Subsection (3)(a):

(i) Subsections L-204(1), (2), (3), and (7) do not apply; and

(ii) Subsection L-204(8) applies, except that the applicable time period that is suspended is the time period described in Subsection L-403(1).

(4) As soon as reasonably possible after receiving a review request that complies with the requirements of Section L-401 and is not invalid under Subsection (1)(b), a review officer shall provide the requester a written response with the results of the review officer's review of the access denial or record request nonresponse that is the subject of the review request.

### **Section L-403. When written response is considered issued.**

(1) A review officer is considered to have issued a written response to a review request if the review officer does not issue a written response under Section L-402 within:



- (a) for a review request related to an in-state request:
  - (i)(A) 20 business days after the review request is submitted; or
  - (B) 25 business days after the review request is submitted, if the review request is submitted during an annual general session or special session of the Legislature; or
  - (ii) a period of time that ends later than the period of time stated in Subsection (1)(a)(i), if the requester and review officer agree to the longer period of time; or
- (b) for a review request related to an out-of-state request:
  - (i) 60 calendar days after the review request is submitted; or
  - (ii) a period of time that ends later than the period of time stated in Subsection (1)(b)(i), if the requester and review officer agree to the longer period of time.
- (2)(a) If a review officer is considered to have issued a written response under Subsection (1) related to a review request of an access denial:
  - (i) the written response is considered to be a decision allowing the access denial to stand; and
  - (ii) the access denial stands.
- (b) If a review officer is considered to have issued a written response under Subsection (1) related to a review request of a record request nonresponse, the written response is considered to be an access denial related to the records requested in the record request that is the subject of the record request nonresponse.

## **Part 5. Appeal to Legislative Records Committee**

### **Section L-501. Requester may appeal access denial to Legislative Records Committee -- Notice of appeal.**

- (1) A requester may appeal an access denial to the Legislative Records Committee if:
  - (a) the requester previously submitted a review request:
    - (i) seeking review of the access denial or record request nonresponse;
    - (ii) that complies with the requirements of Section L-401; and
    - (iii) that is not invalid under Subsection L-402(1)(b);

(b) the review officer did not override the access denial; and  
(c) the requester submits a notice of appeal to the Legislative Records Committee, as provided in Section L-502, no later than 15 business days after the review officer, as applicable:

- (i) issues a written response under Section L-402; or
- (ii) is considered to have issued a written response under Section L-403.

(2) The Legislative Records Committee may not accept a notice of appeal or consider an appeal sought by a requester unless the notice of appeal complies with the requirements of this section.

(3) A notice of appeal under this part shall contain:

- (a) the name, mailing address, and daytime telephone number of the requester;
- (b) if the requester is an entity, the name of the entity's contact individual; and
- (c) the email address of the requester or, if the requester is an entity, the email address of the entity's contact individual, if the requester indicates that the requester is willing to accept communications regarding the appeal by email.

(4) A notice of appeal under this part shall be accompanied by:

- (a) a copy of the record request that is the subject of the access denial;
- (b)(i) a copy of the records coordinator's written response that contains the access denial; or
- (ii) if applicable, a statement that the records coordinator is considered to have not responded to the requester's record request under Subsection L-204(7), including the date that records coordinator is considered to have not responded;
- (c) a copy of the requester's review request;
- (d)(i) a copy of the review officer's written response under Section L-402; or
- (ii) if applicable, a statement that the review officer was considered to have issued a written response under Section L-403, including the date that the response was considered to have been issued; and
- (e) a certificate of service signed by the requester certifying the submission to the records coordinator of a copy of:
  - (i) the notice of appeal and the documents required under this Subsection (4) to accompany the notice of appeal; and

(ii) the written statement under Subsection (6), if the requester submits a written statement under Subsection (6).

(5) A notice of appeal is invalid and without effect and shall be disregarded by the Legislative Records Committee if the notice of appeal is submitted to the Legislative Records Committee before, as applicable:

(a) the review officer issues a written response under Section L-402; or

(b) the expiration of the time for the review officer to respond to the review request under Section L-403.

(6) At the same time the requester submits a notice of appeal, the requester may submit a separate written statement, no longer than 1,500 words in length, explaining the basis of the requester's appeal.

(7) A records coordinator or the legislative office that made the access denial:

(a) may, within 10 business days after receiving a copy of the notice of appeal, submit to the Legislative Records Committee a brief written explanation of the basis of the access denial; and

(b) shall send a copy of the explanation under Subsection (7)(a) to the requester, if the records coordinator or legislative office submits a written explanation under Subsection (7)(a).

(8) The Legislative Records Committee may require a records coordinator or review officer to prepare and submit to the committee the brief description referred to in Subsection L-204(4)(b) if:

(a) the record request that is the subject of the appeal is the subject of a record request nonresponse; and

(b) the review officer was considered to have issued a written response under Section L-403.

(9)(a) The director of the Office of Legislative Research and General Counsel shall, on behalf of the Legislative Records Committee, summarily reject a notice of appeal if the Legislative Records Committee:

(i) is prohibited from accepting a notice of appeal and considering an appeal under Subsection (2); or

(ii) is required to disregard a notice of appeal under Subsection (5).

- (b) The director of the Office of Legislative Research and General Counsel:
  - (i) shall provide written notice of a rejection under Subsection (9)(a) to a requester whose notice of appeal is rejected under Subsection (9)(a); and
  - (ii) is not required to notify or consult with the Legislative Records Committee in rejecting a notice of appeal under Subsection (9)(a).

**Section L-502. Filing with or submitting documents to the Legislative Records Committee.**

(1) A notice of appeal or other document required or permitted under this policy to be filed with or submitted to the Legislative Records Committee shall be filed with or submitted to the director of the Office of Legislative Research and General Counsel.

(2) Filing with or submitting to the director of the Office of Legislative Research and General Counsel alone constitutes filing with or submitting to the Legislative Records Committee.

**Section L-503. Nature of appeal to Legislative Records Committee -- Committee review of records.**

(1) An appeal to the Legislative Records Committee is not an adversarial or quasi-judicial proceeding but is an opportunity for:

(a) the requester to explain the basis of the requester's appeal and explain why the requester should be provided access to the record that is the subject of the access denial; and

(b) the Legislative Records Committee to make its own assessment as to whether:

(i) a legislative office's classification of a record that is the subject of an access denial is proper;

(ii) the record that is the subject of an access denial should be reclassified; and

(iii) the interests favoring access are greater than the interests favoring a denial of access.

(2)(a) A member of the Legislative Records Committee may:

(i) review a record that is the subject of the access denial at any time; and

(ii) consult ex parte with the records coordinator, review officer, or chief officer concerning anything related to the record request, access denial, record request nonresponse, or other action or inaction with respect to the record request, including:

- (A) the classification of the record that is the subject of the access denial; and
- (B) the basis of any access denial.

(b) A legislative office shall make a record available to a member of the Legislative Records Committee for the member's review under Subsection (2)(a) at the member's request.

#### **Section L-504. Legislative Records Committee proceedings.**

(1)(a) A requester may request the Legislative Records Committee to hold a hearing on the requester's appeal by submitting to the Legislative Records Committee a request for a hearing.

(b) The Legislative Records Committee may not consider a request for a hearing unless the request for a hearing is submitted with, and at the same time the requester files, a notice of appeal.

(2) The Legislative Records Committee may:

- (a) in its sole discretion, grant or deny a request for a hearing; and
- (b) on its own, decide to hold a hearing on the appeal.

(3) If the Legislative Records Committee grants a request for a hearing or decides on its own to hold a hearing, the committee shall:

(a) schedule a hearing to be held within:

(i) 60 calendar days after the notice of hearing under Subsection (3)(b) is issued; or

(ii) a longer period of time than the period described in Subsection (3)(a)(i), if the requester agrees to the longer period of time;

(b) send a notice of the date, time, and place of the hearing to:

- (i) the requester;
- (ii) the records coordinator; and

(iii) the chief officer of the legislative office that made the access denial or the record request nonresponse that is the subject of the requester's appeal.

(4) The purposes of a hearing under this section are:

- (a) for the Legislative Records Committee to acquire a better understanding of:
  - (i) the basis of the legislative office's access denial; and
  - (ii) the basis of the requester's appeal;
- (b) to allow a requester an opportunity to explain why the Legislative Records Committee should override the access denial; and
- (c) to allow the records coordinator, review officer, or other representative of the legislative office to explain the basis of the access denial, if the Legislative Records Committee requests the legislative office's appearance under Subsection (5).

(5) The Legislative Records Committee may request the records coordinator, review officer, or other representative of the legislative office that made the access denial to appear at a hearing under this section to explain the basis for the access denial, subject to Subsection (6).

(6) In explaining or discussing the basis for an access denial or discussing a record that is subject to an access denial, an individual involved in any capacity at a hearing under this section may not disclose the content of any record that is subject to the access denial.

(7) The chair of the Legislature Records Committee is:

- (a) the president of the Senate, for an appeal initiated during an even-numbered year; and
- (b) the speaker of the House of Representatives, for an appeal initiated during an odd-numbered year.

(8) The Legislative Records Committee or its chair may establish procedures and other requirements, in addition to the provisions of this policy, to govern proceedings before the Legislative Records Committee.

**Section L-505. Legislative Records Committee statement.**

(1) The Legislative Records Committee may:

- (a) reaffirm the access denial and allow the access denial to stand; or
- (b) override the access denial and disclose the record to the requester, if the Legislative Records Committee:

(i) concludes that the legislative office's classification of the record that is the subject of the access denial was erroneous and that the record should properly be classified as public;

(ii) changes the classification of the record to public; or

(iii) determines that the interests favoring access are greater than the interests favoring a denial of access.

(2)(a) The Legislative Records Committee shall:

(i) issue a brief written statement explaining the result of the committee's assessment of an access denial on appeal; and

(ii) send a copy of the written statement to:

(A) the requester;

(B) the records coordinator; and

(C) the chief officer of the legislative office whose access denial is the subject of the appeal.

(b) The Legislative Records Committee is considered to have issued a written statement reaffirming the access denial, and the access denial stands, if the Legislative Records Committee does not issue a written statement within:

(i)(A) 20 business days after a hearing under Section L-504, if a hearing is held;  
or

(B) 60 calendar days after the filing of a notice of appeal, if no hearing is held; or

(ii) a longer period of time than the period of time specified in Subsection (2)(b)(i), if the requester agrees to the longer period of time.

(3)(a) The access denial that is the subject of an appeal under this part stands unless the Legislative Records Committee overrides the access denial.

(b) A decision of the Legislative Records Committee is final.

## **Appendix A**

### **Legislative Records Retention Schedule**

Permanent or until the legislative office transmits the record to the Division of Archives

A record defined as a “permanent legislative record” in Utah Code Section 63A-12-102.5

65 years after the termination of an employee’s employment or until the legislative office transmits the record to the Division of Archives

Employee personnel file (except employee time and leave records), including performance evaluations, evidence of disciplinary action, and any disability, illness, or other medical records, that a legislative office does not transmit to the Division of Archives for retention and preservation

6 years

Written records of procurements, as described in Utah Code Section 63G-6a-2002(4)

6 years after expiration of the contract term

Procurement contracts, other than contracts made under Utah Code Section 63G-6a-506 (small purchases), 63G-6a-802 (sole source, transitional cost, or standard procurement process impractical), or 63G-6a-803 (emergency)

5 years

Requests for legislation submitted to the Office of Legislative Research and General Counsel  
Requests for appropriations submitted to the Office of the Legislative Fiscal Analyst  
Requests for an audit or review submitted to the Office of the Legislative Auditor General

3 years

Records that document financial transactions and operations of a legislative office such as reimbursement requests, invoices, purchase orders, payment records, inventory records, payroll records, and other records that document receipts or expenditures

2 years

Employee time and leave records

1 year after expiration of the contract term

Records of contracts made under Utah Code Section 63G-6a-506 (small purchases), 63G-6a-802 (sole source, transitional cost, or standard procurement process impractical), or 63G-6a-803 (emergency)



Until the administrative need to retain the record ends, as determined by the legislative office

All other records

## Appendix B

### Legislative Management Committee Policy L -- Legislative Records

#### Schedule of Fees for Filing a Record Request

#### and for a Legislative Office Responding to a Record Request

Fee Description	Amount of Fee for an In-State Request	Amount of Fee for an Out-of-State Request
Filing fee	\$0 (except as provided below)	\$75
	\$50, for an over-the-threshold request	
Fee for staff time to identify, gather, segregate, classify, and provide records, including for a preliminary search under Subsection L-301(4)	\$40 per hour after the first two hours (except as provided below)	\$60 per hour
	\$40 per each hour of staff time, for an over-the-threshold request	
Fee for electronic delivery of records	\$0	\$0
Fee for photocopies of records	\$.10 per side (black and white) \$.40 per side (color)	\$.20 per side (black and white) \$.80 per side (color)
Fee for faxing records	\$1 per page	\$2 per page
Fee for CD/DVD containing records	\$5 per disc	\$5 per disc
Fee to cover mailing cost	Actual cost, with \$2 minimum	Actual cost, with \$3 minimum
Fee for providing a certified copy of a record	\$10 (in addition to any other applicable fee)	\$10 (in addition to any other applicable fee)