

# **Utah Legislature Policies and Procedures for Handling Records Requests**

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As authorized by Utah Code Ann. § 63-2-703 (Supp. 2006), the Legislature establishes the following policies and procedures to handle requests for records and classification, designation, fees, access, denials, segregation, appeals, management, retention, and amendment of records.

These policies and procedures are designed to establish fair information practices recognizing:

- the right of privacy in relation to personal data gathered by the legislative offices; and
- the public's right of access to information concerning the conduct of the Legislature's business.

These policies and procedures and the attached appendixes supersede all prior policies, procedures, memoranda, or other statements regarding the Legislature's records policy and procedures.

## **Policies and Procedures**

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

#### **Section 1.1. Definitions -- Applicability of the Government Records Access and Management Act.**

- (1) As used in these Policies and Procedures:
  - (a) the terms defined in Utah Code Ann. § 63-2-103 (Supp. 2006) have the same meaning; and
  - (b) "Draft Legislation" means a draft version of a bill, a resolution, a substitute, an amendment, or a fiscal note, along with a related document that is in the possession of the Office of Legislative Research and General Counsel or the Office of Legislative Fiscal Analyst.
  - (c) "Legislative office" means the:
    - (i) House of Representative;
    - (ii) Senate;
    - (iii) Office of Legislative Research and General Counsel;
    - (iv) Office of the Legislative Fiscal Analyst;
    - (v) Office of the Legislative Auditor General; and
    - (vi) Office of Legislative Printing, which includes the Bill Room.
  - (d)
    - (i) "Legislative sponsor" means the legislator who requests that a bill, a resolution, a substitute, or an amendment be prepared by the Office of Legislative Research and General Counsel or that a fiscal note be prepared by the Office of Legislative Fiscal Analyst.
    - (ii) A legislative sponsor of a bill or resolution may be different from a legislative sponsor of a draft substitute or draft amendment.

- (iii) A legislative sponsor may direct the distribution or disclosure of that legislator's bill, resolution, substitute, amendment, or fiscal note.
- (2) Utah Code Ann. § 63-2-703 (Supp. 2006) reflects the principles of separation of powers and governs the applicability of Title 63, Chapter 2, Government Records Access and Management Act, to requests for records from legislative offices.

**Section 1.2. Classification of records as private, controlled, or protected.**

- (1) As authorized by Utah Code Ann. § 63-2-703(1) (Supp. 2006), the Legislature may classify records as private, controlled, or protected.
- (2)
  - (a) An electronic message, including an e-mail, instant message, voice-mail, or other digital message, is presumed to be temporary information between the sender and recipient, not rising to the level of a "record" that would require the Legislature to maintain the information and to disclose it under certain circumstances.
  - (b) The Legislature recognizes that an electronic message may contain information that should be classified as a public, private, protected, or controlled record, according to the contents of the electronic message.
    - (i) If the information is intended by a legislative recipient or legislative sender to be a classified record, the legislative sender or recipient must either save the information to a file or print the information. Based on the content of the electronic message, the electronic message record will be retained in accordance with Appendix A, Records Retention Schedule.
    - (ii) If the information is intended by a governmental entity recipient or sender that is not a legislative office or officer to be a classified record, the governmental entity sender or recipient must either save the information to a file or print the information and retain the item in accordance with that governmental entity's retention schedule.
  - (c) The Legislature does not assume responsibility for backups of electronic messages as being maintained on the system.

**Section 1.3. Sharing Records.**

- (1) Draft legislation is a protected document under Utah Code Ann. Sec 63-2-304 (22), unless made public by the legislative sponsor, consistent with Section 1.4.
- (2) As part of the Legislative Branch's deliberative legislative process, a legislative sponsor may make, or direct legislative staff to make, a limited distribution of draft legislation to another legislator, a government entity, a constituent, or another third party without changing the protected classification of the draft legislation, if:
  - (a) the legislative sponsor or legislative staff notifies the person to whom the draft legislation is distributed, that the legislative sponsor intends that the draft legislation remain protected; and
  - (b) the limited distribution of the draft legislation is for the purpose of allowing review and receiving comment on the draft legislation.

- (3) A legislator, a member of legislative staff, a government entity, a constituent, or another third party who accepts draft legislation under Subsection (2) may not distribute the draft legislation without the permission of the legislative sponsor.
- (4) If a governmental entity shares a private, controlled, or protected record with a legislator or legislative staff, the legislator and legislative staff will maintain that record according to the record classification of the governmental entity that shared the record.

#### **1.4 Making proposed legislation public.**

- (1) If a legislative sponsor distributes, or authorizes legislative staff to distribute, draft legislation to a public body as defined in Title 52, Chapter 4, Open and Public Meetings Act, the legislator is considered to have made the distributed draft legislation public.
- (2) In addition to Subsection (1), a legislative sponsor may also elect to make a draft legislation public under Section 63-2-304(20) or (22).

#### **Section 1.5. Retention schedule for records.**

A retention schedule is attached as Appendix A.

### **Part 2. Requests for Records**

#### **Section 2.1. Requests -- Time limit for response and extraordinary circumstances.**

- (1) (a) A person making a request for a record shall furnish the records officer of the legislative office with a written request containing:
  - (i) that person's name, mailing address, and daytime telephone number; and
  - (ii) a description of the record requested that identifies the record with reasonable specificity.
- (b) The records officer of the each legislative office is as follows:
  - (i) for the Senate, the Manager of Senate Services;
  - (ii) for the House of Representatives, the Administrative Assistant;
  - (iii) for the Office of Legislative Research and General Counsel, the Assistant Director;
  - (iv) for the Office of the Legislative Auditor General, the Deputy Auditor General;
  - (v) for the Office of the Legislative Fiscal Analyst, the Assistant Deputy Director as designated by the Legislative Fiscal Analyst; and
  - (vi) for the Office of Legislative Printing, which includes the Bill Room, the Office Manager.
- (2) (a) As soon as reasonably possible, but no later than 10 business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person, the legislative office shall respond to the request by:
  - (i) approving the request and providing the record;
  - (ii) denying the request;

- (iii) subject to Subsection (6), notifying the requester that it does not maintain the record and providing, if known, the name and address of the legislative office or governmental entity that does maintain the record;
  - (iv) notifying the requester that because the request was made during a general or special session, the legislative office shall respond within the time limits of Subsection (5); or
  - (v) notifying the requester that because of one of the extraordinary circumstances listed in Subsection (3), it cannot immediately approve or deny the request.
- (b) A notice described by Subsection (2)(a)(iv) or (v) shall describe the circumstances relied upon and specify the date when the records will be available.
  - (c) Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.
- (3) The following circumstances constitute extraordinary circumstances that allow a legislative office to delay approval or denial by an additional period of time as specified in Subsection (4) if the legislative office determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (2):
- (a) another legislative office or governmental entity is using the record, in which case the originating legislative office shall promptly request that the legislative office or governmental entity currently in possession return the record;
  - (b) another governmental entity or legislative office is using the record as part of an audit, and returning the record before the completion of the audit would impair the conduct of the audit;
  - (c) the request is for a voluminous quantity of records;
  - (d) the legislative office is currently processing a large number of records requests;
  - (e) the request requires the legislative office to review a large number of records to locate the records requested;
  - (f) the decision to release a record involves legal issues that require the legislative office to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;
  - (g) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or
  - (h) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.
- (4) If one of the extraordinary circumstances listed in Subsection (3) precludes approval or denial within the time specified in Subsection (2), the following time limits apply to the extraordinary circumstances:
- (a) for claims under Subsection (3)(a), the legislative office or governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work;

- (b) for claims under Subsection (3)(b), the originating legislative office shall notify the requester when the record is available for inspection and copying;
  - (c) for claims under Subsections (3)(c), (d), and (e), the legislative office shall:
    - (i) disclose the records that it has located which the requester is entitled to inspect;
    - (ii) provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request; and
    - (iii) complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible;
  - (d) for claims under Subsection (3)(f), the legislative office shall either approve or deny the request within five business days after the response time specified for the original request has expired;
  - (e) for claims under Subsection (3)(g), the legislative office shall fulfill the request within 15 business days from the date of the original request; or
  - (f) for claims under Subsection (3)(h), the legislative office shall complete its programming and disclose the requested records as soon as reasonably possible.
- (5) (a) Unless an extraordinary circumstance as described in Subsection (3) exists, if a request for records is made during a general or special legislative session, the legislative office may respond as soon as reasonably possible but no later than 15 business days from the date of the original request.
- (b) If extraordinary circumstances exist, the legislative office may respond within the later of:
- (i) 15 business days from the date of the original request; or
  - (ii) the time limits of Subsection (4).
- (6) (a) Subject to the other provisions of this Subsection (6), a person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record.
- (b) If a request for access is submitted to a legislative office other than the legislative office that maintains the record:
- (i) the legislative office shall promptly forward the request to the appropriate legislative office; and
  - (ii) if the request is forwarded promptly, the time limit for response begins when the record is received by the legislative office that maintains the record.
- (c) In response to a request for a record, a legislative office may not provide a record that it has received under Utah Code Ann. § 63-2-206 (Supp. 2006) as a shared record if the record was shared for the purpose of auditing and the legislative office is authorized by state statute to conduct an audit. If a legislative office is prohibited from providing a record under this Subsection (6)(c), the legislative office shall:
- (i) deny the record request; and

- (ii) inform the person making the request that a record request must be submitted to the governmental entity that prepares, owns, or retains the record.
- (7) If the legislative office fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination of denial.

### **Section 2.2. Fees for records requests.**

- (1) The Legislature may charge a fee to obtain a record as provided under these Policies and Procedures as attached in Appendix B.
- (2) The Legislature may fulfill a record request without charge if:
  - (a) the release of the record primarily benefits the public rather than the person requesting the record; or
  - (b) the individual requesting the record is the subject of the record or an individual specified in Utah Code Ann. § 63-2-202(1) or (2) (Supp. 2006).

## **Part 3. Appeals**

### **Section 3.1. Appeal to the legislative officer.**

- (1)
  - (a) Any person aggrieved by a legislative office's access determination may appeal the determination within 30 calendar days from the day on which the access determination is issued by filing a notice of appeal with the appropriate legislative officer. The legislative officers are as follows:
    - (i) for the Senate, the Secretary of the Senate;
    - (ii) for the House of Representatives, the Chief Clerk of the House;
    - (iii) for the Office of Legislative Research and General Counsel, the director of that office;
    - (iv) for the Office of Legislative Fiscal Analyst, the Legislative Fiscal Analyst;
    - (v) for the Office of Legislative Auditor General, the Legislative Auditor General; and
    - (vi) for the Office of Legislative Printing, which includes the Bill Room, the Legislative Printing Supervisor.
  - (b) If a legislative office claims extraordinary circumstances and specifies the date when the records will be available, and, if the requester believes that the extraordinary circumstances do not exist or that the time specified is unreasonable, the requester may appeal the legislative office's claim of extraordinary circumstances or date for compliance within 30 calendar days after the day on which written notification of a claim of extraordinary circumstances by the legislative office was issued, despite the lack of a determination or its equivalent under Subsection 2.1(7).
- (2) The notice of appeal shall contain the following information:
  - (a) the petitioner's name, mailing address, and daytime telephone number;
  - (b) a copy of any written request for records; and

- (c) the relief sought.
- (3) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.
- (4) (a) If the appeal involves a record that is the subject of a business confidentiality claim as described in Utah Code Ann. § 63-2-308 (Supp. 2006), the appropriate legislative officer shall:
  - (i) send notice of the petitioner's appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this Subsection (4)(a)(i) must be given to more than 35 persons, it shall be given as soon as reasonably possible; and
  - (ii) send notice of the business confidentiality claim and the schedule for the appropriate legislative officer's determination to the petitioner within three business days after receiving notice of the petitioner's appeal.
- (b) The business confidentiality claimant shall have seven business days after notice is sent by the appropriate legislative officer to submit further support for the claim of business confidentiality.
- (5) (a) The appropriate legislative officer shall make a determination on the appeal within:
  - (i) five business days after the appropriate legislative officer receives the notice of appeal;
  - (ii) 12 business days after the legislative officer sends the petitioner's notice of appeal to a person who submitted a claim of business confidentiality;
  - (iii) the time limits of Section 2.1(4) if the extraordinary circumstances described in Section 2.1(3) occur; or
  - (iv) if a notice of appeal is filed during a general or special legislative session, five business days in addition to the time period specified in this section to comply with any other obligation imposed under this section on the legislative officer.
- (b) If the legislative officer fails to make a determination within the time specified in Subsection (5)(a), the failure shall be considered the equivalent of an order denying the appeal.
- (c) Notwithstanding the provisions of this Subsection (5), the petitioner and appropriate legislative office may agree to extend the time periods specified in this Subsection (5).
- (6) The appropriate legislative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private or protected if the interests favoring access outweigh the interests favoring restriction of access.
- (7) The legislative office shall send written notice of the determination of the appropriate legislative officer to all participants. If the appropriate legislative officer affirms the denial in whole or in part, the denial shall include:

- (a) a statement that the petitioner has the right to appeal the denial to the Legislative Records Committee;
  - (b) the time limits for filing an appeal; and
  - (c) the name and business address of the director of the Office of Legislative Research and General Counsel.
- (8) A person aggrieved by a legislative office's classification or designation determination under these Policies and Procedures and who is not requesting access to the records, may appeal that determination using the procedures provided in these Policies and Procedures. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the determination on the appeal shall be made within 30 calendar days after receiving the notice of appeal.

**Section 3.2 Appeals to the Legislative Records Committee.**

- (1) A petitioner who participated in the appeal to the appropriate legislative officer may appeal a determination by the appropriate legislative officer to the Legislative Records Committee by filing a notice of appeal with the director of the Office of Legislative Research and General Counsel no later than:
- (a) 30 calendar days after the appropriate legislative officer has granted or denied the records request in whole or in part, including a denial under Subsection 3.1(5)(b) or 3.1(7); or
  - (b) 45 calendar days after the original request for records if:
    - (i) the circumstances described in Section 3.1(1)(b) occur; and
    - (ii) the appropriate legislative officer failed to make a determination under Section 3.1.
- (2) The Legislative Records Committee shall consist of:
- (a) the Speaker of the House of Representatives;
  - (b) the Minority Leader of the House of Representatives;
  - (c) the President of the Senate; and
  - (d) the Minority Leader of the Senate.
- (3) The notice of appeal shall contain the following information:
- (a) the petitioner's name, mailing address, and daytime telephone number;
  - (b) a copy of any denial of the records request; and
  - (c) the relief sought.
- (4) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.
- (5) No later than five business days after receiving a notice of appeal, the director of the Office of Legislative Research and General Counsel shall:
- (a) schedule a hearing for the Legislative Records Committee to discuss the appeal which shall be held:
    - (i) no sooner than 15 business days after the date of the filing of the appeal; and
    - (ii) no later than the 52 calendar days from the date of the filing of the appeal;
  - (b) send a copy of the notice of hearing to the petitioner; and



- (c) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:
  - (i) each member of the Legislative Records Committee;
  - (ii) the appropriate legislative officer for the legislative office from which the appeal originated;
  - (iii) any person who made a business confidentiality claim as described in Utah Code Ann. § 63-2-308 (Supp. 2006) for a record that is the subject of the appeal; and
  - (iv) all persons who were a party to the appeal under Section 3.1 to the appropriate legislative officer.
- (6) (a) No later than 10 business days after receiving the notice of appeal, the legislative office may submit to the director of the Office of Legislative Research and General Counsel a written statement of facts, reasons, and legal authority in support of its position.
- (b) The legislative office shall send a copy of the written statement to the petitioner by first class mail, postage prepaid.
- (c) The director of the Office of Legislative Research and General Counsel shall forward a copy of the written statement to each member of the Legislative Records Committee.
- (7) (a) No later than 10 business days after the notice of appeal is sent by the director of the Office of Legislative Research and General Counsel, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the Legislative Records Committee. Any written statements of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention.
- (b) The person seeking intervention shall provide copies of the statement to all parties to the proceedings before the Legislative Records Committee.
- (8) The Legislative Records Committee shall hold a hearing as scheduled in accordance with Subsection (5).
- (9) At the hearing, the Legislative Records Committee shall allow the parties to speak on the issues or present evidence. The Legislative Records Committee may allow other interested persons to comment on the issues.
- (10) (a) Discovery is prohibited, but the Legislative Records Committee may issue subpoenas in accordance with Title 36, Chapter 14, Legislative Subpoena Powers, or issue other orders to compel production of necessary evidence.
- (11) The Legislative Records Committee's review shall be de novo.
- (12) (a) The Legislative Records Committee may review the disputed records. The review shall be in camera.
- (b) Members of the Legislative Records Committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by these Policies and Procedures.

- (13) (a) No later than five business days after the hearing, the Legislative Records Committee shall issue a signed order either granting the petition in whole or in part or upholding the determination of the legislative officer in whole or in part.
- (b) The Legislative Records Committee may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access outweighs the interest favoring restriction of access.
- (c) In making a determination under Subsection (13)(b), the Legislative Records Committee shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect:
  - (i) privacy interests in the case of:
    - (A) private or controlled records; or
    - (B) business confidentiality interests in records classified as protected; and
  - (ii) privacy interests or the public interest in the case of other protected records.
- (14) The order of the Legislative Records Committee shall include:
  - (a) a statement of reasons for the decision, including citations to the provisions that govern disclosure of the record if the citations do not disclose private, controlled, or protected information;
  - (b) a description of the record or portions of the record to which access was ordered or denied if the description does not disclose private, controlled, or protected information or information exempt from disclosure under Utah Code Ann. § 63-2-201(3)(b) (Supp. 2006);
  - (c) a statement that any party to the proceeding before the Legislative Records Committee may appeal the Legislative Records Committee's decision to district court;
  - (d) a brief summary of the appeals process;
  - (e) the time limits for filing an appeal; and
  - (f) a notice that in order to protect the party's rights on appeal, the party may wish to seek advice from an attorney.
- (15) If the Legislative Records Committee fails to issue a decision within 57 calendar days of the filing of the notice of appeal, that failure shall be considered the equivalent of an order denying the appeal. The petitioner shall notify the Legislative Records Committee in writing if the petitioner considers the appeal denied.
- (16) Notwithstanding the other provisions of this Section 3.2, if a notice of appeal is filed during a general or special legislative session, a legislative office, a legislative officer, or the Legislative Records Committee may take five business days in addition to any time period specified in this section to comply with any obligation imposed under this section on the legislative office, legislative officer, or Legislative Records Committee.

**Section 3.3. Judicial review.**

- (1)
  - (a) Any party to a proceeding before the Legislative Records Committee may petition for judicial review by the district court of the Legislative Records Committee's order.
  - (b) The petition described in Subsection (1)(a) shall be filed no later than 30 calendar days after the date of the Legislative Records Committee's order.
- (2) A petition for judicial review shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain:
  - (a) the petitioner's name and mailing address;
  - (b) a copy of the Legislative Records Committee's order from which the appeal is taken;
  - (c) the name and mailing address of the legislative office that issued the initial determination with a copy of that determination;
  - (d) a request for relief specifying the type and extent of relief requested; and
  - (e) a statement of the reasons why the petitioner is entitled to relief.
- (3) The complaint shall be served on Legislative General Counsel in the Office of Legislative Research and General Counsel.
- (4) The proceedings in the district court shall be governed by the provisions of Utah Code Ann. § 63-2-404(3) through (8) (2004).