

GOVERNMENT RECORDS COMMITTEE PROCESSES

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Martin R. Stephens

AN ACT RELATING TO STATE AFFAIRS IN GENERAL; MODIFYING PROVISIONS FOR APPEALS TO THE STATE RECORDS COMMITTEE; AMENDING REQUIREMENTS FOR PRODUCING REQUIRED RECORDS; PROVIDING PENALTIES; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63-2-403, as last amended by Chapter 133, Laws of Utah 1995

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

Section 1. Section **63-2-403** is amended to read:

63-2-403. Appeals to the records committee.

(1) A petitioner, including an aggrieved person who did not participate in the appeal to the governmental entity's chief administrative officer, may appeal to the records committee by filing a notice of appeal with the executive secretary no later than:

(a) 30 days after the chief administrative officer of the governmental entity has granted or denied the records request in whole or in part, including a denial under Subsection 63-2-204(7);

(b) 45 days after the original request for records if:

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

(ii) the chief administrative officer failed to make a determination under Section 63-2-401.

(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 denial of the records request; 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) ~~No~~ Except as provided in Subsection (4)(b), no later than three business days after

receiving a notice of appeal, the executive secretary of the records committee shall:

[~~(a)~~] (i) schedule a hearing for the records committee to discuss the appeal at the next regularly scheduled committee meeting falling at least 14 days after the date the notice of appeal is filed but no longer than 45 days after the date the notice of appeal was filed provided, however, the records committee may schedule an expedited hearing upon application of the petitioner and good cause shown;

[~~(b)~~] (ii) send a copy of the notice of hearing to the petitioner; and

[~~(c)~~] (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:

[~~(i)~~] (A) each member of the records committee;

[~~(ii)~~] (B) the records officer and the chief administrative officer of the governmental entity from which the appeal originated;

[~~(iii)~~] (C) any person who made a business confidentiality claim under Section 63-2-308 for a record that is the subject of the appeal; and

[~~(iv)~~] (D) all persons who participated in the proceedings before the governmental entity's chief administrative officer.

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

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

(B) The committee shall make rules to implement this section as provided by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(5) (a) A written statement of facts, reasons, and legal authority in support of the governmental entity's position must be submitted to the executive secretary of the records committee not later than five business days before the hearing.

(b) The governmental entity shall send a copy of the written statement to the petitioner by first class mail, postage prepaid. The executive secretary shall forward a copy of the written statement to each member of the records committee.

(6) No later than ten business days after the notice of appeal is sent by the executive secretary, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the records committee. Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention. The person seeking intervention shall provide copies of the statement to all parties to the proceedings before the records committee.

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

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

(9) (a) The records committee may review the disputed records. However, if the committee is weighing the various interests under Subsection (11), the committee must review the disputed records. The review shall be in camera.

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

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

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

[(b)] (c) The records committee's review shall be de novo.

(11) (a) No later than three business days after the hearing, the records committee shall issue a signed order either granting the petition in whole or in part or upholding the determination of the governmental entity in whole or in part.

(b) The 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 (11)(b), the records committee shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records.

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

(a) a statement of reasons for the decision, including citations to this chapter, court rule or order, another state statute, federal statute, or federal regulation that governs disclosure of the record, provided that 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, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63-2-201(3)(b);

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

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

(13) If the records committee fails to issue a decision within 35 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 records committee in writing if he considers the appeal denied.

(14) (a) Each government entity shall comply with the order of the records committee and, if records are ordered to be produced, file:

(i) a notice of compliance with the records committee upon production of the records; or

(ii) a notice of intent to appeal.

(b) (i) If the government entity fails to file a notice of compliance or a notice of intent to

appeal, the records committee may do either or both of the following:

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

(B) send written notice of the entity's noncompliance to the governor for executive branch entities, to the Legislative Management Committee for legislative branch entities, and to the Judicial Council for judicial branch agencies entities.

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