

1 **GOVERNMENT RECORDS COMMITTEE**

2 **PROCESSES**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Martin R. Stephens**

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

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

11 AMENDS:

12 **63-2-403**, as last amended by Chapter 133, Laws of Utah 1995

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

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

15 **63-2-403. Appeals to the records committee.**

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

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

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

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

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

24 (2) The notice of appeal shall contain the following information:

25 (a) the petitioner's name, mailing address, and daytime telephone number;

26 (b) a copy of any denial of the records request; and

27 (c) the relief sought.

28 (3) The petitioner may file a short statement of facts, reasons, and legal authority in
29 support of the appeal.

30 (4) (a) [Nσ] Except as provided in Subsection (4)(b), no later than three business days after
31 receiving a notice of appeal, the executive secretary of the records committee shall:

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

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

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

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

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

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

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

47 (b) (i) The executive secretary of the records committee may decline to schedule a hearing
48 if the records that are the subject of the appeal have been found by the committee in a previous
49 hearing involving the same government agency to be appropriately classified as private, controlled,
50 or protected.

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

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

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

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

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

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

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

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

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

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

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

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

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

87 (b) The records committee may, upon consideration and weighing of the various interests
88 and public policies pertinent to the classification and disclosure or nondisclosure, order the
89 disclosure of information properly classified as private, controlled, or protected if the public

90 interest favoring access outweighs the interest favoring restriction of access.

91 (c) In making a determination under Subsection (11)(b), the records committee shall
92 consider and, where appropriate, limit the requester's use and further disclosure of the record in
93 order to protect privacy interests in the case of private or controlled records, business
94 confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2),
95 and privacy interests or the public interest in the case of other protected records.

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

97 (a) a statement of reasons for the decision, including citations to this chapter, court rule
98 or order, another state statute, federal statute, or federal regulation that governs disclosure of the
99 record, provided that the citations do not disclose private, controlled, or protected information;

100 (b) a description of the record or portions of the record to which access was ordered or
101 denied, provided that the description does not disclose private, controlled, or protected information
102 or information exempt from disclosure under Subsection 63-2-201(3)(b);

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

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

107 (13) If the records committee fails to issue a decision within 35 days of the filing of the
108 notice of appeal, that failure shall be considered the equivalent of an order denying the appeal. The
109 petitioner shall notify the records committee in writing if he considers the appeal denied.

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

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

113 (ii) a notice of intent to appeal.

114 (b) A public officer or employee who fails to comply with this section is guilty of a class
115 B misdemeanor.

Legislative Review Note

as of 1-29-99 9:26 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel