

Senator Carlene M. Walker proposes the following substitute bill:

GOVERNMENT RECORDS AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Carlene M. Walker

LONG TITLE

General Description:

This bill modifies provisions of the Government Records Access and Management Act.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "person" under the Government Records Access and Management Act to include combinations of individuals or entities acting in concert;
- ▶ modifies the definition of "record" under the act to include only references to the singular and to clarify its relation to the definition of "record series";
- ▶ allows government entities to sequentially produce multiple record requests from persons serving their private interest;
- ▶ permits government entities to allow a person requesting records to personally make copies or to provide facilities for copying records in certain circumstances;
- ▶ requires government entities to ~~Œ~~→ [supervise a person's copying of records] provide reasonable safeguards ←Œ to protect the public from the potential loss of public records;
- ▶ allows government entities to provide access to an electronic equivalent of a paper record;
- ▶ modifies language relating to appeals from records committee decisions to clarify that appeals are permitted by any party; and



26 ▶ makes technical changes.

27 **Monies Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **63-2-103**, as last amended by Chapter 78, Laws of Utah 2002

34 **63-2-201**, as last amended by Chapter 191, Laws of Utah 2002

35 **63-2-203**, as last amended by Chapter 48, Laws of Utah 1999

36 **63-2-204**, as last amended by Chapter 280, Laws of Utah 1992

37 **63-2-403**, as last amended by Chapter 245, Laws of Utah 1999

38 **63-2-903**, as last amended by Chapters 97 and 185, Laws of Utah 2002



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

41 Section 1. Section **63-2-103** is amended to read:

42 **63-2-103. Definitions.**

43 As used in this chapter:

44 (1) "Audit" means:

45 (a) a systematic examination of financial, management, program, and related records
46 for the purpose of determining the fair presentation of financial statements, adequacy of
47 internal controls, or compliance with laws and regulations; or

48 (b) a systematic examination of program procedures and operations for the purpose of
49 determining their effectiveness, economy, efficiency, and compliance with statutes and
50 regulations.

51 (2) "Chronological logs" mean the regular and customary summary records of law
52 enforcement agencies and other public safety agencies that show the time and general nature of
53 police, fire, and paramedic calls made to the agency and any arrests or jail bookings made by
54 the agency.

55 (3) "Classification," "classify," and their derivative forms mean determining whether a
56 record series, record, or information within a record is public, private, controlled, protected, or

57 exempt from disclosure under Subsection 63-2-201(3)(b).

58 (4) (a) "Computer program" means a series of instructions or statements that permit the
59 functioning of a computer system in a manner designed to provide storage, retrieval, and
60 manipulation of data from the computer system, and any associated documentation and source
61 material that explain how to operate the computer program.

62 (b) "Computer program" does not mean:

63 (i) the original data, including numbers, text, voice, graphics, and images;

64 (ii) analysis, compilation, and other manipulated forms of the original data produced by
65 use of the program; or

66 (iii) the mathematical or statistical formulas (excluding the underlying mathematical
67 algorithms contained in the program) that would be used if the manipulated forms of the
68 original data were to be produced manually.

69 (5) (a) "Contractor" means:

70 (i) any person who contracts with a governmental entity to provide goods or services
71 directly to a governmental entity; or

72 (ii) any private, nonprofit organization that receives funds from a governmental entity.

73 (b) "Contractor" does not mean a private provider.

74 (6) "Controlled record" means a record containing data on individuals that is controlled
75 as provided by Section 63-2-303.

76 (7) "Designation," "designate," and their derivative forms mean indicating, based on a
77 governmental entity's familiarity with a record series or based on a governmental entity's
78 review of a reasonable sample of a record series, the primary classification that a majority of
79 records in a record series would be given if classified and the classification that other records
80 typically present in the record series would be given if classified.

81 (8) "Explosive" means a chemical compound, device, or mixture:

82 (a) commonly used or intended for the purpose of producing an explosion; and

83 (b) that contains oxidizing or combustive units or other ingredients in proportions,
84 quantities, or packing so that:

85 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
86 compound or mixture may cause a sudden generation of highly heated gases; and

87 (ii) the resultant gaseous pressures are capable of:

88 (A) producing destructive effects on contiguous objects; or

89 (B) causing death or serious bodily injury.

90 (9) "Government audit agency" means any governmental entity that conducts [audits]
91 an audit.

92 (10) (a) "Governmental entity" means:

93 (i) executive department agencies of the state, the offices of the governor, lieutenant
94 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
95 the Board of Examiners, the National Guard, the Career Service Review Board, the State Board
96 of Education, the State Board of Regents, and the State Archives;

97 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
98 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
99 committees, except any political party, group, caucus, or rules or sifting committee of the
100 Legislature;

101 (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar
102 administrative units in the judicial branch;

103 (iv) any state-funded institution of higher education or public education; or

104 (v) any political subdivision of the state, but, if a political subdivision has adopted an
105 ordinance or a policy relating to information practices pursuant to Section 63-2-701, this
106 chapter shall apply to the political subdivision to the extent specified in Section 63-2-701 or as
107 specified in any other section of this chapter that specifically refers to political subdivisions.

108 (b) "Governmental entity" also means every office, agency, board, bureau, committee,
109 department, advisory board, or commission of [~~the entities~~] an entity listed in Subsection
110 (10)(a) that is funded or established by the government to carry out the public's business.

111 (11) "Gross compensation" means every form of remuneration payable for a given
112 period to an individual for services provided including salaries, commissions, vacation pay,
113 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any
114 similar benefit received from the individual's employer.

115 (12) "Individual" means a human being.

116 (13) (a) "Initial contact report" means an initial written or recorded report, however
117 titled, prepared by peace officers engaged in public patrol or response duties describing official
118 actions initially taken in response to either a public complaint about or the discovery of an

119 apparent violation of law, which report may describe:

- 120 (i) the date, time, location, and nature of the complaint, the incident, or offense;
- 121 (ii) names of victims;
- 122 (iii) the nature or general scope of the agency's initial actions taken in response to the
- 123 incident;
- 124 (iv) the general nature of any injuries or estimate of damages sustained in the incident;
- 125 (v) the name, address, and other identifying information about any person arrested or
- 126 charged in connection with the incident; or
- 127 (vi) the identity of the public safety personnel, except undercover personnel, or
- 128 prosecuting attorney involved in responding to the initial incident.

129 (b) Initial contact reports do not include follow-up or investigative reports prepared

130 after the initial contact report. However, if the information specified in Subsection (13)(a)

131 appears in follow-up or investigative reports, it may only be treated confidentially if it is

132 private, controlled, protected, or exempt from disclosure under Subsection 63-2-201(3)(b).

133 (14) "Notice of compliance" means a statement confirming that a government entity

134 has complied with a records committee order.

135 ~~[(14)]~~ (15) "Person" means any individual, nonprofit or profit corporation, partnership,

136 sole proprietorship, or other type of business organization, or any combination thereof, acting

137 in concert with one another.

138 ~~[(15)]~~ (16) "Private provider" means any person who contracts with a governmental

139 entity to provide services directly to the public.

140 ~~[(16)]~~ (17) "Private record" means a record containing data on individuals that is

141 private as provided by Section 63-2-302.

142 ~~[(17)]~~ (18) "Protected record" means a record that is classified protected as provided by

143 Section 63-2-304.

144 ~~[(18)]~~ (19) "Public record" means a record that is not private, controlled, or protected

145 and that is not exempt from disclosure as provided in Subsection 63-2-201(3)(b).

146 ~~[(19)]~~ (20) (a) "Record" means [all books, letters, documents, papers, maps, plans,

147 photographs, films, cards, tapes, recordings,] a book, letter, document, paper, map, plan,

148 photograph, film, card, tape, recording, electronic data, or other documentary [materials]

149 material regardless of physical form or characteristics:

150 (i) ~~[which are]~~ that is prepared, owned, received, or retained by a governmental entity
151 or political subdivision; and

152 (ii) where all of the information in the original is reproducible by photocopy or other
153 mechanical or electronic means.

154 (b) "Record" does not mean:

155 (i) a temporary ~~[drafts]~~ draft or similar ~~[materials]~~ material prepared for the originator's
156 personal use or prepared by the originator for the personal use of an individual for whom ~~[he]~~
157 the originator is working;

158 (ii) ~~[materials]~~ material that are legally owned by an individual in ~~[his]~~ the individual's
159 private capacity;

160 (iii) ~~[materials]~~ material to which access is limited by the laws of copyright or patent
161 unless the copyright or patent is owned by a governmental entity or political subdivision;

162 (iv) proprietary software;

163 (v) junk mail or a commercial ~~[publications]~~ publication received by a governmental
164 entity or an official or employee of a governmental entity;

165 (vi) ~~[books and other materials that are]~~ a book that is cataloged, indexed, or
166 inventoried and contained in the collections of ~~[libraries]~~ a library open to the public;

167 (vii) material that is cataloged, indexed, or inventoried and contained in the collections
168 of a library open to the public, regardless of physical form or characteristics of the material;

169 ~~[(vii)]~~ (viii) a daily ~~[calendars and]~~ calendar or other personal ~~[notes]~~ note prepared by
170 the originator for the originator's personal use or for the personal use of an individual for whom
171 ~~[he]~~ the originator is working;

172 ~~[(viii)]~~ (ix) a computer ~~[programs as defined in Subsection (4) that are]~~ program that is
173 developed or purchased by or for any governmental entity for its own use; or

174 ~~[(ix) notes]~~ (x) a note or internal ~~[memoranda]~~ memorandum prepared as part of the
175 deliberative process by:

176 (A) a member of the judiciary[;];

177 (B) an administrative law judge[;];

178 (C) a member of the Board of Pardons and Parole[;]; or

179 (D) a member of any other body charged by law with performing a quasi-judicial
180 function.

181 ~~[(20)]~~ (21) "Record series" means a group of records that may be treated as a unit for
182 purposes of designation, description, management, or disposition.

183 ~~[(21)]~~ (22) "Records committee" means the State Records Committee created in
184 Section 63-2-501.

185 ~~[(22)]~~ (23) "Records officer" means the individual appointed by the chief
186 administrative officer of each governmental entity, or the political subdivision to work with
187 state archives in the care, maintenance, scheduling, designation, classification, disposal, and
188 preservation of records.

189 ~~[(23)]~~ (24) "Schedule," "scheduling," and their derivative forms mean the process of
190 specifying the length of time each record series should be retained by a governmental entity for
191 administrative, legal, fiscal, or historical purposes and when each record series should be
192 transferred to the state archives or destroyed.

193 ~~[(24)]~~ (25) "State archives" means the Division of Archives and Records Service
194 created in Section 63-2-901.

195 ~~[(25)]~~ (26) "State archivist" means the director of the state archives.

196 ~~[(26)]~~ (27) "Summary data" means statistical records and compilations that contain
197 data derived from private, controlled, or protected information but that do not disclose private,
198 controlled, or protected information.

199 Section 2. Section **63-2-201** is amended to read:

200 **63-2-201. Right to inspect records and receive copies of records.**

201 (1) Every person has the right to inspect a public record free of charge, and the right to
202 take a copy of a public record during normal working hours, subject to Sections 63-2-203 and
203 63-2-204.

204 (2) ~~[All records are]~~ A record is public unless otherwise expressly provided by statute.

205 (3) The following records are not public:

206 (a) ~~[records that are]~~ a record that is private, controlled, or protected under Sections
207 63-2-302, 63-2-302.5, 63-2-303, and 63-2-304; and

208 (b) ~~[records]~~ a record to which access is restricted pursuant to court rule, another state
209 statute, federal statute, or federal regulation, including records for which access is governed or
210 restricted as a condition of participation in a state or federal program or for receiving state or
211 federal funds.

212 (4) Only [~~those records~~] a record specified in Section 63-2-302, 63-2-302.5, 63-2-303,
213 or 63-2-304 may be classified private, controlled, or protected.

214 (5) (a) A governmental entity may not disclose a record that is private, controlled, or
215 protected to any person except as provided in Subsection (5)(b), Section 63-2-202, 63-2-206, or
216 63-2-302.5.

217 (b) A governmental entity may disclose [~~records~~] a record that [~~are~~] is private under
218 Subsection 63-2-302(2) or protected under Section 63-2-304 to persons other than those
219 specified in Section 63-2-202 or 63-2-206 if the head of a governmental entity, or a designee,
220 determines that:

221 (i) there is no interest in restricting access to the record[~~, or that~~]; or

222 (ii) the interests favoring access outweighs the interest favoring restriction of access.

223 (6) (a) The disclosure of [~~records~~] a record to which access is governed or limited
224 pursuant to court rule, another state statute, federal statute, or federal regulation, including
225 [~~records~~] a record for which access is governed or limited as a condition of participation in a
226 state or federal program or for receiving state or federal funds, is governed by the specific
227 provisions of that statute, rule, or regulation.

228 (b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter
229 is not inconsistent with the statute, rule, or regulation.

230 (7) A governmental entity shall provide a person with a certified copy of a record if:

231 (a) the person requesting the record has a right to inspect it;

232 (b) the person identifies the record with reasonable specificity; and

233 (c) the person pays the lawful fees.

234 (8) (a) A governmental entity is not required to create a record in response to a request.

235 (b) Upon request, a governmental entity shall provide a record in a particular format if:

236 (i) the governmental entity is able to do so without unreasonably interfering with the
237 governmental entity's duties and responsibilities; and

238 (ii) the requester agrees to pay the governmental entity for its costs incurred in
239 providing the record in the requested format in accordance with Section 63-2-203.

240 (c) Nothing in this section requires a governmental entity to fulfill a person's records
241 request if the request unreasonably duplicates prior records requests from that person.

242 (9) (a) ~~§~~ **→** ~~[The] A~~ ~~←~~ ~~§~~ governmental entity may allow a person requesting **§** **→** more than 50
242a pages of ~~←~~ ~~§~~ records to copy the

243 records if:

244 ~~§→ [(9) If a] (i) the person requests copies of more than 50 pages of records from a~~
 245 ~~governmental entity[, and, if];~~

246 ~~—— (ii) (i) ←§~~ the records are contained in files that do not contain records that are exempt from
 247 disclosure, or the records may be segregated to remove private, protected, or controlled
 248 information from disclosure; and

249 ~~§→ [(iii) (ii) ←§~~ the governmental entity ~~§→ [supervises the copying process]~~ provides
 249a reasonable safeguards ←§ to protect the public from
 250 the potential for loss of a public record.

251 (b) When the requirements of Subsection (9)(a) are met, the governmental entity may:
 252 ~~[(a)] (i)~~ provide the requester with the facilities for copying the requested records and
 253 require that the requester make the copies ~~[himself]~~; or

254 ~~[(b)] (ii)~~ allow the requester to provide ~~[his]~~ the requester's own copying facilities and
 255 personnel to make the copies at the governmental entity's offices and waive the fees for
 256 copying the records.

257 (10) (a) A governmental entity that owns an intellectual property right and that offers
 258 the intellectual property right for sale or license may control by ordinance or policy the
 259 duplication and distribution of the material based on terms the governmental entity considers to
 260 be in the public interest.

261 (b) Nothing in this chapter shall be construed to limit or impair the rights or protections
 262 granted to the governmental entity under federal copyright or patent law as a result of its
 263 ownership of the intellectual property right.

264 (11) A governmental entity may not use the physical form, electronic or otherwise, in
 265 which a record is stored to deny, or unreasonably hinder the rights of ~~[persons]~~ a person to
 266 inspect and receive ~~[copies]~~ a copy of a record under this chapter.

267 (12) A governmental entity may provide access to an electronic copy of a record in lieu
 268 of providing access to its paper equivalent.

269 Section 3. Section **63-2-203** is amended to read:

270 **63-2-203. Fees.**

271 (1) A governmental entity may charge a reasonable fee to cover the governmental
 272 entity's actual cost of duplicating a record. This fee shall be approved by the governmental
 273 entity's executive officer.

274 (2) (a) When a governmental entity compiles a record in a form other than that
275 normally maintained by the governmental entity, the actual costs under this section may include
276 the following:

277 ~~[(a)]~~ (i) the cost of staff time for summarizing, compiling, or tailoring the record either
278 into an organization or media to meet the person's request;

279 ~~[(b)]~~ (ii) the cost of staff time for search, retrieval, and other direct administrative costs
280 for complying with a request~~[- The hourly charge may not exceed the salary of the lowest paid~~
281 ~~employee who, in the discretion of the custodian of records, has the necessary skill and training~~
282 ~~to perform the request; provided, however, that no charge may be made for the first quarter~~
283 ~~hour of staff time]; and~~

284 ~~[(c)]~~ (iii) in the case of fees for a record that is the result of computer output other than
285 word processing, the actual incremental cost of providing the electronic services and products
286 together with a reasonable portion of the costs associated with formatting or interfacing the
287 information for particular users, and the administrative costs as set forth in Subsections
288 (2)(a)(i) and ~~[(b)]~~ (ii).

289 (b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest
290 paid employee who, in the discretion of the custodian of records, has the necessary skill and
291 training to perform the request.

292 (c) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first
293 quarter hour of staff time.

294 (3) (a) Fees shall be established as ~~[follows:]~~ provided in this Subsection (3).

295 ~~[(a) Governmental entities]~~

296 (b) A governmental entity with fees established by the Legislature;

297 (i) shall establish the fees defined in Subsection (2), or other actual costs associated
298 with this section through the budget process~~[- Governmental entities with fees established by~~
299 ~~the Legislature]; and~~

300 (ii) may use the procedures of Section 63-38-3.2 to set fees until the Legislature
301 establishes fees through the budget process. ~~[A fee set by a governmental entity in accordance~~
302 ~~with Section 63-38-3.2 expires on May 1, 1995.]~~

303 ~~[(b)]~~ (c) Political subdivisions shall establish fees by ordinance or written formal policy
304 adopted by the governing body.

- 305 ~~[(e)]~~ (d) The judiciary shall establish fees by rules of the judicial council.
- 306 (4) A governmental entity may fulfill a record request without charge and is
307 encouraged to do so when it determines that:
- 308 (a) releasing the record primarily benefits the public rather than a person;
- 309 (b) the individual requesting the record is the subject of the record, or an individual
310 specified in Subsection 63-2-202(1) or (2); or
- 311 (c) the requester's legal rights are directly implicated by the information in the record,
312 and the requester is impecunious.
- 313 (5) A governmental entity may not charge a fee for:
- 314 (a) reviewing a record to determine whether it is subject to disclosure, except as
315 permitted by Subsection (2)~~[(b)]~~(a)(ii); or
- 316 (b) inspecting a record.
- 317 (6) (a) A person who believes that there has been an unreasonable denial of a fee
318 waiver under Subsection (4) may appeal the denial in the same manner as a person appeals
319 when inspection of a public record is denied under Section 63-2-205.
- 320 (b) The adjudicative body hearing the appeal has the same authority when a fee waiver
321 or reduction is denied as it has when the inspection of a public record is denied.
- 322 (7) (a) All fees received under this section by a governmental entity subject to
323 Subsection (3)~~[(a)]~~(b) shall be retained by the governmental entity as a dedicated credit.
- 324 (b) Those funds shall be used to recover the actual cost and expenses incurred by the
325 governmental entity in providing the requested record or record series.
- 326 (8) (a) A governmental entity may require payment of past fees and future estimated
327 fees before beginning to process a request if:
- 328 (i) fees are expected to exceed \$50~~[-]~~; or ~~[if]~~
- 329 (ii) the requester has not paid fees from previous requests.
- 330 (b) Any prepaid amount in excess of fees due shall be returned to the requester.
- 331 (9) This section does not alter, repeal, or reduce fees established by other statutes or
332 legislative acts.
- 333 (10) (a) Notwithstanding Subsection (3)~~[(b)]~~(c), fees for voter registration records shall
334 be set as provided in this Subsection (10).
- 335 (b) The lieutenant governor shall:

336 (i) after consultation with county clerks, establish uniform fees for voter registration
337 and voter history records that meet the requirements of this section; and

338 (ii) obtain legislative approval of those fees by following the procedures and
339 requirements of Section 63-38-3.2.

340 Section 4. Section **63-2-204** is amended to read:

341 **63-2-204. Requests -- Time limit for response and extraordinary circumstances.**

342 (1) A person making a request for a record shall furnish the governmental entity with a
343 written request containing [~~his~~]:

344 (a) the person's name, mailing address, and daytime telephone number, if available[;];
345 and

346 (b) a description of the [~~records~~] record requested that identifies the record with
347 reasonable specificity.

348 (2) A governmental entity may make rules in accordance with Title 63, Chapter 46a,
349 Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall
350 be directed.

351 (3) (a) As soon as reasonably possible, but no later than ten business days after
352 receiving a written request, or five business days after receiving a written request if the
353 requester demonstrates that expedited response to the record request benefits the public rather
354 than the person, the governmental entity shall respond to the request by:

355 (i) approving the request and providing the record;

356 (ii) denying the request;

357 (iii) notifying the requester that it does not maintain the record and providing, if
358 known, the name and address of the governmental entity that does maintain the record; or

359 (iv) notifying the requester that because of one of the extraordinary circumstances
360 listed in Subsection (4), it cannot immediately approve or deny the request.

361 (b) The notice described in Subsection (3)(a)(iv) shall:

362 (i) describe the circumstances relied upon; and

363 (ii) specify the date when the records will be available.

364 [~~(b)~~] (c) Any person who requests a record to obtain information for a story or report
365 for publication or broadcast to the general public is presumed to be acting to benefit the public
366 rather than a person.

367 (4) The following circumstances constitute "extraordinary circumstances" that allow a
 368 governmental entity to delay approval or denial by an additional period of time as specified in
 369 Subsection [63-2-204](5) if the governmental entity determines that due to the extraordinary
 370 circumstances it cannot respond within the time limits provided in Subsection (3):

371 (a) another governmental entity is using the record, in which case the originating
 372 governmental entity shall promptly request that the governmental entity currently in possession
 373 return the record;

374 (b) another governmental entity is using the record as part of an audit, and returning the
 375 record before the completion of the audit would impair the conduct of the audit;

376 (c) (i) the request is for a ~~§~~ **→ [f] voluminous quantity of records; [f] or a ←§ record**
 376a series containing a
 377 substantial number of records;

378 ~~§~~ **→ [(ii) the requester seeks a substantial number of records or records series; or**
 379 ~~— (iii)] (ii) ←§ the requester seeks a substantial number of records or records series in requests~~
 380 filed within ~~§~~ **→ [ten] five ←§ working days of each other;**

381 (d) the governmental entity is currently processing a large number of records requests;

382 (e) the request requires the governmental entity to review a large number of records to
 383 locate the records requested;

384 (f) the decision to release a record involves legal issues that require the governmental
 385 entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case
 386 law;

387 (g) segregating information that the requester is entitled to inspect from information
 388 that the requester is not entitled to inspect requires extensive editing; or

389 (h) segregating information that the requester is entitled to inspect from information
 390 that the requester is not entitled to inspect requires computer programming.

391 (5) If one of the extraordinary circumstances listed in Subsection (4) precludes
 392 approval or denial within the time specified in Subsection (3), the following time limits apply
 393 to the extraordinary circumstances:

394 (a) for claims under Subsection (4)(a), the governmental entity currently in possession
 395 of the record shall return the record to the originating entity within five business days of the
 396 request for the return unless returning the record would impair the holder's work;

397 (b) for claims under Subsection (4)(b), the originating governmental entity shall notify

398 the requester when the record is available for inspection and copying;

399 (c) for claims under Subsections (4)(c), (d), and (e), the governmental entity shall:

400 (i) disclose the records that it has located which the requester is entitled to inspect;

401 (ii) provide the requester with an estimate of the amount of time it will take to finish

402 the work required to respond to the request; ~~and~~

403 (iii) complete the work and disclose those records that the requester is entitled to

404 inspect as soon as reasonably possible; and

405 (iv) for any person that does not establish a right to an expedited response as

406 authorized by Subsection (3)(a), a governmental entity may choose to:

407 (A) require the person to provide for copying of the records as provided in Subsection

408 63-2-201(9); or

409 (B) treat a request for multiple records as separate record requests, and respond

410 sequentially to each request;

411 (d) for claims under Subsection (4)(f), the governmental entity shall either approve or

412 deny the request within five business days after the response time specified for the original

413 request has expired;

414 (e) for claims under Subsection (4)(g), the governmental entity shall fulfill the request
415 within 15 business days from the date of the original request; or

416 (f) for claims under Subsection (4)(h), the governmental entity shall complete its
417 programming and disclose the requested records as soon as reasonably possible.

418 (6) (a) If a request for access is submitted to an office of a governmental entity other
419 than that specified by rule in accordance with Subsection (2), the office shall promptly forward
420 the request to the appropriate office.

421 (b) If the request is forwarded promptly, the time limit for response begins when the
422 record is received by the office specified by rule.

423 (7) If the governmental entity fails to provide the requested records or issue a denial
424 within the specified time period, that failure is considered the equivalent of a determination
425 denying access to the ~~records~~ record.

426 Section 5. Section **63-2-403** is amended to read:

427 **63-2-403. Appeals to the records committee.**

428 (1) A petitioner, including an aggrieved person who did not participate in the appeal to

429 the governmental entity's chief administrative officer, may appeal to the records committee by
430 filing a notice of appeal with the executive secretary no later than:

431 (a) 30 days after the chief administrative officer of the governmental entity has granted
432 or denied the [records] record request in whole or in part, including a denial under Subsection
433 63-2-204(7);

434 (b) 45 days after the original request for [records] a record if:

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

436 (ii) the chief administrative officer failed to make a determination under Section
437 63-2-401.

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

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

440 (b) a copy of any denial of the [records] record request; and

441 (c) the relief sought.

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

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

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

451 (ii) send a copy of the notice of hearing to the petitioner; and

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

454 (A) each member of the records committee;

455 (B) the records officer and the chief administrative officer of the governmental entity
456 from which the appeal originated;

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

459 (D) all persons who participated in the proceedings before the governmental entity's

460 chief administrative officer.

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

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

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

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

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

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

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

481 (c) The person seeking intervention shall provide copies of the statement to all parties
482 to the proceedings before the records committee.

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

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

488 (9) (a) The records committee may review the disputed ~~§~~ → [f] records [→record] ← ~~§~~ .
488a However, if
489 the committee is weighing the various interests under Subsection (11), the committee must
490 review the disputed ~~§~~ → [f] records [→record] ← ~~§~~. The review shall be in camera.

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

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

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

499 (c) The records committee's review shall be de novo.

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

503 (b) The records committee may, upon consideration and weighing of the various
504 interests and public policies pertinent to the classification and disclosure or nondisclosure,
505 order the disclosure of information properly classified as private, controlled, or protected if the
506 public interest favoring access outweighs the interest favoring restriction of access.

507 (c) In making a determination under Subsection (11)(b), the records committee shall
508 consider and, where appropriate, limit the requester's use and further disclosure of the record in
509 order to protect privacy interests in the case of a private or controlled [~~records~~] record, business
510 confidentiality interests in the case of [~~records~~] a record protected under Subsections
511 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected
512 records.

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

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

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

521 (c) a statement that any party to the proceeding before the records committee may

522 appeal the records committee's decision to district court; and

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

526 (13) If the records committee fails to issue a decision within 35 days of the filing of the
527 notice of appeal, that failure shall be considered the equivalent of an order denying the appeal.
528 The petitioner shall notify the records committee in writing if ~~[he]~~ the petitioner considers the
529 appeal denied.

530 (14) (a) ~~[Each government entity]~~ Unless a notice of intent to appeal is filed under
531 Subsection (14)(b), each party to the proceeding shall comply with the order of the records
532 committee [and, if records are ordered to be produced, file: (i)].

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

535 (c) If the records committee orders the government entity to produce a record and no
536 appeal is filed, or if, as a result of the appeal, the government entity is required to produce a
537 record, the government entity shall:

538 (i) produce the record; and

539 (ii) file a notice of compliance with the records committee ~~[upon production of the~~
540 ~~records; or]~~.

541 ~~[(ii) a notice of intent to appeal:]~~

542 ~~[(b)]~~ (d) (i) If the government entity that is ordered to produce a record fails to file a
543 notice of compliance or a notice of intent to appeal, the records committee may do either or
544 both of the following:

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

546 (B) send written notice of the government entity's noncompliance to:

547 (I) the governor for executive branch entities~~[-to]~~;

548 (II) the Legislative Management Committee for legislative branch entities~~[-]~~; and ~~[to]~~

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

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

553 Section 6. Section **63-2-903** is amended to read:

554 **63-2-903. Duties of governmental entities.**

555 The chief administrative officer of each governmental entity shall:

556 (1) establish and maintain an active, continuing program for the economical and
557 efficient management of the governmental entity's records as provided by this chapter;

558 (2) appoint one or more records officers who will be trained to work with the state
559 archives in the care, maintenance, scheduling, disposal, classification, designation, access, and
560 preservation of records;

561 (3) make and maintain adequate and proper documentation of the organization,
562 functions, policies, decisions, procedures, and essential transactions of the governmental entity
563 designed to furnish information to protect the legal and financial rights of persons directly
564 affected by the entity's activities;

565 (4) submit to the state archivist proposed schedules of records for final approval by the
566 records committee;

567 (5) cooperate with the state archivist in conducting surveys made by the state archivist;

568 (6) comply with rules issued by the Department of Administrative Services as provided
569 by Section 63-2-904;

570 (7) report to the state archives the designation of record series that it maintains;

571 (8) report to the state archives the classification of each record series that is classified;

572 and

573 (9) establish and report to the state archives retention schedules for objects that the
574 governmental entity determines are not ~~[records]~~ defined as a ~~§~~ **→ [public]** ~~← §~~ record under

574a ~~[Subsection]~~

575 Section 63-2-103~~(18)~~, but that have historical or evidentiary value.

Fiscal Note
Bill Number SB0044s01

Government Records Amendments

25-Jan-05

11:57 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst