

Senator Curtis S. Bramble proposes the following substitute bill:

GOVERNMENT RECORDS AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Bradley M. Daw

LONG TITLE

General Description:

This bill modifies provisions relating to government records.

Highlighted Provisions:

This bill:

- ▶ modifies the process of appealing the denial of a record request;
- ▶ modifies provisions relating to a political subdivision's process for appealing a decision concerning records of the political subdivision;
- ▶ makes certain consumer complaints filed with the Division of Consumer Protection public records; and
- ▶ modifies the timeline that applies in an appeal to the records committee and allows the records committee to defer consideration of an appeal under certain circumstances.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 26 [13-15-3](#), as last amended by Laws of Utah 2010, Chapter 278
- 27 [63G-2-401](#), as last amended by Laws of Utah 2012, Chapter 377
- 28 [63G-2-402](#), as renumbered and amended by Laws of Utah 2008, Chapter 382
- 29 [63G-2-403](#), as last amended by Laws of Utah 2013, Chapter 445
- 30 [63G-2-404](#), as last amended by Laws of Utah 2012, Chapter 377
- 31 [63G-2-501](#), as last amended by Laws of Utah 2013, Chapter 231
- 32 [63G-2-701](#), as last amended by Laws of Utah 2009, Chapter 131

33 ENACTS:

- 34 [13-26-12](#), Utah Code Annotated 1953
- 35 [63G-2-400.5](#), Utah Code Annotated 1953



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

38 Section 1. Section **13-15-3** is amended to read:

39 **13-15-3. Administration and enforcement -- Powers -- Legal counsel -- Fees --**
 40 **Consumer complaints.**

41 (1) The division shall administer and enforce this chapter. In the exercise of its
 42 responsibilities, the division shall enjoy the powers, and be subject to the constraints, set forth
 43 in Title 13, Chapter 2, Division of Consumer Protection.

44 (2) The attorney general, upon request, shall give legal advice to, and act as counsel
 45 for, the division in the exercise of its responsibilities under this chapter.

46 (3) All fees collected under this chapter shall be deposited in the Commerce Service
 47 Account created by Section [13-1-2](#).

48 (4) (a) As used in this Subsection (4), "consumer complaint" means a complaint:

49 (i) filed with the division by a consumer or business;

50 (ii) that alleges facts relating to conduct that the division regulates under this chapter;

51 and

52 (iii) (A) that alleges a loss to the consumer or business of \$3,500 or more; or

53 (B) that is one of at least 50 other complaints against the same person filed by other

54 consumers or businesses.

55 (b) Notwithstanding Subsection [13-11-7](#)(2) and subject to Subsection (4)(c), a

56 consumer complaint:

57 (i) is a public record; and
58 (ii) may not be classified as a private, controlled, or protected record under Title 63G,
59 Chapter 2, Government Records Access and Management Act.

60 (c) Before making a consumer complaint available to the public, the division may
61 redact from the complaint:

62 (i) any information that would disclose the name, address, Social Security number,
63 bank account information, email address, or telephone number of the consumer or business; or

64 (ii) any other information that could, in the division's judgment, disclose the identity of
65 the consumer or business filing the consumer complaint.

66 Section 2. Section **13-26-12** is enacted to read:

67 **13-26-12. Consumer complaints are public.**

68 (1) As used in this section, "consumer complaint" means a complaint:

69 (a) filed with the division by a consumer or business;

70 (b) that alleges facts relating to conduct that the division regulates under this chapter;

71 and

72 (c) (i) that alleges a loss to the consumer or business of \$3,500 or more; or

73 (ii) that is one of at least 50 other complaints against the same person filed by other
74 consumers or businesses.

75 (2) Notwithstanding Subsection [13-11-7\(2\)](#) and subject to Subsection (3), a consumer
76 complaint:

77 (a) is a public record; and

78 (b) may not be classified as a private, controlled, or protected record under Title 63G,
79 Chapter 2, Government Records Access and Management Act.

80 (3) Before making a consumer complaint available to the public, the division may
81 redact from the complaint:

82 (a) any information that would disclose the name, address, Social Security number,
83 bank account information, email address, or telephone number of the consumer or business; or

84 (b) any other information that could, in the division's judgment, disclose the identity of
85 the consumer or business filing the consumer complaint.

86 Section 3. Section **63G-2-400.5** is enacted to read:

87 **63G-2-400.5. Definitions.**

88 As used in this part:

89 (1) "Access denial" means a governmental entity's denial, under Subsection
90 63G-2-204(8) or Section 63G-2-205, in whole or in part, of a record request.

91 (2) "Appellate affirmation" means a decision of a chief administrative officer, local
92 appeals board, or records committee affirming an access denial.

93 (3) "Interested party" means a person, other than a requester, who is aggrieved by an
94 access denial or an appellate affirmation, whether or not the person participated in proceedings
95 leading to the access denial or appellate affirmation.

96 (4) "Local appeals board" means an appeals board established by a political subdivision
97 under Subsection 63G-2-701(5)(c).

98 (5) "Record request" means a request for a record under Section 63G-2-204.

99 (6) "Records committee appellant" means:

100 (a) a political subdivision that seeks to appeal a decision of a local appeals board to the
101 records committee; or

102 (b) a requester or interested party who seeks to appeal to the records committee a
103 decision affirming an access denial.

104 (7) "Requester" means a person who submits a record request to a governmental entity.

105 Section 4. Section **63G-2-401** is amended to read:

106 **63G-2-401. Appeal to chief administrative officer -- Notice of the determination**
107 **of the appeal.**

108 (1) (a) [~~Any person aggrieved by a governmental entity's access determination under~~
109 ~~this chapter, including a person not a party to the governmental entity's proceeding, may appeal~~
110 ~~the determination within 30 days]~~ A requester or interested party may appeal an access denial
111 to the chief administrative officer of the governmental entity by filing a notice of appeal within
112 30 days after the governmental entity sends a notice of denial under Section 63G-2-205.

113 (b) If a governmental entity claims extraordinary circumstances and specifies the date
114 when the records will be available under Subsection 63G-2-204(3), and, if the requester
115 believes the extraordinary circumstances do not exist or that the time specified is unreasonable,
116 the requester may appeal the governmental entity's claim of extraordinary circumstances or date
117 for compliance within 30 days after notification of a claim of extraordinary circumstances by
118 the governmental entity, despite the lack of a "determination" or its equivalent under

119 Subsection ~~63G-2-204~~(7)(8).

120 (2) ~~The~~ A notice of appeal shall contain ~~the following information~~:

121 (a) the ~~petitioner's~~ name, mailing address, and daytime telephone number of the
122 requester or interested party; and

123 (b) the relief sought.

124 (3) The ~~petitioner~~ requester or interested party may file a short statement of facts,
125 reasons, and legal authority in support of the appeal.

126 (4) (a) If the appeal involves a record that is the subject of a business confidentiality
127 claim under Section ~~63G-2-309~~, the chief administrative officer shall:

128 (i) send notice of the ~~requester's~~ appeal to the business confidentiality claimant within
129 three business days after receiving notice, except that if notice under this section must be given
130 to more than 35 persons, it shall be given as soon as reasonably possible; and

131 (ii) send notice of the business confidentiality claim and the schedule for the chief
132 administrative officer's determination to the requester or interested party within three business
133 days after receiving notice of the ~~requester's~~ appeal.

134 (b) The business confidentiality claimant shall have seven business days after notice is
135 sent by the administrative officer to submit further support for the claim of business
136 confidentiality.

137 (5) (a) The chief administrative officer shall make a ~~determination~~ decision on the
138 appeal within ~~the following period of time~~:

139 (i) ~~within~~ five business days after the chief administrative officer's receipt of the
140 notice of appeal; or

141 (ii) ~~within~~ 12 business days after the governmental entity sends the ~~requester's~~
142 notice of appeal to a person who submitted a claim of business confidentiality.

143 (b) If the chief administrative officer fails to make a ~~determination~~ decision within
144 the time specified in Subsection (5)(a), the failure ~~shall be considered~~ is the equivalent of ~~an~~
145 ~~order denying the appeal~~ a decision affirming the access denial.

146 (c) The provisions of this section notwithstanding, the parties participating in the
147 proceeding may, by agreement, extend the time periods specified in this section.

148 (6) Except as provided in Section ~~63G-2-406~~, the chief administrative officer may,
149 upon consideration and weighing of the various interests and public policies pertinent to the

150 classification and disclosure or nondisclosure, order the disclosure of information properly
151 classified as private under Subsection [63G-2-302\(2\)](#) or protected under Section [63G-2-305](#) if
152 the interests favoring access are greater than or equal to the interests favoring restriction of
153 access.

154 (7) (a) The governmental entity shall send written notice of the [~~determination of the~~]
155 chief administrative [~~officer~~] officer's decision to all participants.

156 (b) If the chief administrative [~~officer affirms the~~] officer's decision is to affirm the
157 access denial in whole or in part, the [~~denial~~] notice under Subsection (7)(a) shall include:

158 (i) a statement that the requester or interested party has the right to appeal the [~~denial~~]
159 decision, as provided in Section [63G-2-402](#), to [~~either~~]:

160 (A) the records committee [~~or~~];

161 (B) district court[~~;~~]; or

162 (C) the local appeals board, if the governmental entity is a political subdivision and the
163 governmental entity has established a local appeals board;

164 (ii) the time limits for filing an appeal[~~;~~]; and

165 (iii) the name and business address of:

166 (A) the executive secretary of the records committee[~~;~~]; and

167 (B) the individual designated as the contact individual for the appeals board, if the
168 governmental entity is a political subdivision that has established an appeals board under
169 Subsection [63G-2-701\(5\)\(c\)](#).

170 (8) A person aggrieved by a governmental entity's classification or designation
171 determination under this chapter, but who is not requesting access to the records, may appeal
172 that determination using the procedures provided in this section. If a nonrequester is the only
173 appellant, the procedures provided in this section shall apply, except that the [~~determination~~]
174 decision on the appeal shall be made within 30 days after receiving the notice of appeal.

175 (9) The duties of the chief administrative officer under this section may be delegated.

176 Section 5. Section [63G-2-402](#) is amended to read:

177 **[63G-2-402. Appealing a decision of a chief administrative officer.](#)**

178 (1) If the decision of the chief administrative officer of a governmental entity [~~denies a~~
179 ~~records request under Section [63G-2-401](#);~~] under Section [63G-2-401](#) is to affirm the denial of a
180 record request, the requester may:

181 (a) appeal the ~~[denial]~~ decision to the records committee, as provided in Section
182 [63G-2-403](#); ~~[or]~~

183 (b) petition for judicial review of the decision in district court, as provided in Section
184 [63G-2-404](#)~~[-]; or~~

185 ~~[(2) Any person aggrieved by a determination of the chief administrative officer of a~~
186 ~~governmental entity under this chapter, including persons who did not participate in the~~
187 ~~governmental entity's proceeding, may appeal the determination to the records committee as~~
188 ~~provided in Section [63G-2-403](#).]~~

189 (c) appeal the decision to the local appeals board if:

190 (i) the decision is of a chief administrative officer of a governmental entity that is a
191 political subdivision; and

192 (ii) the political subdivision has established a local appeals board.

193 (2) A requester who appeals a chief administrative officer's decision to the records
194 committee or a local appeals board does not lose or waive the right to seek judicial review of
195 the decision of the records committee or local appeals board.

196 (3) As provided in Section [63G-2-403](#), an interested party may appeal to the records
197 committee a chief administrative officer's decision under Section [63G-2-401](#) affirming an
198 access denial.

199 Section 6. Section **63G-2-403** is amended to read:

200 **63G-2-403. Appeals to the records committee.**

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

205 (a) 30 days after the ~~[day on which the chief administrative officer of the governmental~~
206 ~~entity grants or denies the record request in whole or in part, including a denial under~~
207 ~~Subsection [63G-2-204](#)(8);]~~ date of issuance of the decision being appealed; or

208 (b) 45 days after the day on which the ~~[original]~~ record request ~~[for a record]~~ is made
209 if:

210 (i) the appeal is an appeal of a chief administrative officer's decision affirming an
211 access denial;

212 ~~[(i)]~~ (ii) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

213 ~~[(ii)]~~ (iii) the chief administrative officer ~~[failed]~~ fails to make a ~~[determination]~~

214 decision under Section 63G-2-401.

215 (2) The notice of appeal shall ~~[contain the following information]:~~

216 (a) contain the ~~[petitioner's]~~ name, mailing address, and daytime telephone number of
217 the records committee appellant;

218 ~~[(b) a copy of any denial of the record request; and]~~

219 (b) be accompanied by a copy of the decision being appealed; and

220 (c) state the relief sought.

221 (3) The ~~[petitioner]~~ records committee appellant:

222 (a) shall, on the day on which the ~~[petitioner files an appeal to]~~ notice of appeal is filed
223 with the records committee, serve a copy of the notice of appeal on:

224 (i) the government entity~~[, described in Subsection (1), to which the appeal relates;~~
225 and] whose access denial is the subject of the appeal, if the records committee appellant is a
226 requester or interested party; or

227 (ii) the requester or interested party who is a party to the local appeals board
228 proceeding that resulted in the decision that the political subdivision is appealing to the records
229 committee, if the records committee appellant is a political subdivision; and

230 (b) may file a short statement of facts, reasons, and legal authority in support of the
231 appeal.

232 (4) (a) Except as provided in ~~[Subsection]~~ Subsections (4)(b) and (c), no later than
233 ~~[five]~~ seven business days after receiving a notice of appeal, the executive secretary of the
234 records committee shall:

235 (i) schedule a hearing for the records committee to discuss the appeal at the next
236 regularly scheduled committee meeting falling at least ~~[14]~~ 16 days after the date the notice of
237 appeal is filed but no longer than ~~[52]~~ 64 calendar days after the date the notice of appeal was
238 filed except that the records committee may schedule an expedited hearing upon application of
239 the ~~[petitioner]~~ records committee appellant and good cause shown;

240 (ii) send a copy of the notice of hearing to the ~~[petitioner]~~ records committee appellant;
241 and

242 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing

243 to:

244 (A) each member of the records committee;

245 (B) the records officer and the chief administrative officer of the governmental entity

246 ~~[from which the appeal originated]~~ whose access denial is the subject of the appeal, if the

247 records committee appellant is a requester or interested party;

248 (C) any person who made a business confidentiality claim under Section 63G-2-309 for
249 a record that is the subject of the appeal; and

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

251 chief administrative officer, if the appeal is of the chief administrative officer's decision

252 affirming an access denial.

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

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

261 (B) The committee shall make rules to implement this section as provided by Title
262 63G, Chapter 3, Utah Administrative Rulemaking Act.

263 (c) The executive secretary of the records committee may schedule a hearing on an
264 appeal to the records committee at a regularly scheduled records committee meeting that is
265 later than the period described in Subsection (4)(a)(i) if that records committee meeting is the
266 first regularly scheduled records committee meeting at which there are fewer than 10 appeals
267 scheduled to be heard.

268 (5) (a) ~~[A]~~ No later than five business days before the hearing, a governmental entity
269 shall submit to the executive secretary of the records committee a written statement of facts,
270 reasons, and legal authority in support of the governmental entity's position ~~[must be submitted~~
271 ~~to the executive secretary of the records committee not later than five business days before the~~
272 hearing].

273 (b) The governmental entity shall send a copy of the written statement ~~[to the~~

274 ~~petitioner]~~ by first class mail, postage prepaid, to the requester or interested party involved in
275 the appeal. The executive secretary shall forward a copy of the written statement to each
276 member of the records committee.

277 (6) (a) No later than 10 business days after the notice of appeal is sent by the executive
278 secretary, a person whose legal interests may be substantially affected by the proceeding may
279 file a request for intervention before the records committee.

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

282 (c) The person seeking intervention shall provide copies of the statement described in
283 Subsection (6)(b) to all parties to the proceedings before the records committee.

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

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

289 (9) (a) (i) The records committee;

290 (A) may review the disputed records~~[- However, if the committee is weighing the~~
291 ~~various interests under Subsection (11), the committee must review the disputed records. The~~
292 ~~review shall be in camera.]; and~~

293 (B) shall review the disputed records, if the committee is weighing the various interests
294 under Subsection (11).

295 (ii) A review of the disputed records under Subsection (9)(a)(i) shall be in camera.

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

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

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

304 (c) (i) The records committee's review shall be de novo, subject to Subsection

305 (10)(c)(ii).

306 (ii) Before completing its review of an appeal from the decision of a local appeals
307 board, the records committee shall review and consider the written decision of the local appeals
308 board.

309 (11) (a) No later than seven business days after the hearing, the records committee shall
310 issue a signed order [~~either~~]:

311 (i) granting the [~~petition~~] relief sought, in whole or in part; or

312 (ii) upholding the [~~determination of the~~] governmental [~~entity~~] entity's access denial in
313 whole or in part.

314 (b) Except as provided in Section 63G-2-406, the records committee may, upon
315 consideration and weighing of the various interests and public policies pertinent to the
316 classification and disclosure or nondisclosure, order the disclosure of information properly
317 classified as private, controlled, or protected if the public interest favoring access is greater
318 than or equal to the interest favoring restriction of access.

319 (c) In making a determination under Subsection (11)(b), the records committee shall
320 consider and, where appropriate, limit the requester's or interested party's use and further
321 disclosure of the record in order to protect:

322 (i) privacy interests in the case of a private or controlled record;

323 (ii) business confidentiality interests in the case of a record protected under Subsection
324 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

325 (iii) privacy interests or the public interest in the case of other protected records.

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

327 (a) a statement of reasons for the decision, including citations to this chapter, court rule
328 or order, another state statute, federal statute, or federal regulation that governs disclosure of
329 the record, [~~provided that~~] if the citations do not disclose private, controlled, or protected
330 information;

331 (b) a description of the record or portions of the record to which access was ordered or
332 denied, [~~provided that~~] if the description does not disclose private, controlled, or protected
333 information or information exempt from disclosure under Subsection 63G-2-201(3)(b);

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

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

339 (13) If the records committee fails to issue a decision within ~~[57]~~ 73 calendar days of
340 the filing of the notice of appeal, that failure ~~[shall be considered]~~ is the equivalent of an order
341 denying the appeal. ~~[The petitioner]~~ A records committee appellant shall notify the records
342 committee in writing if the ~~[petitioner]~~ records committee appellant considers the appeal
343 denied.

344 (14) (a) Unless a notice of intent to appeal is filed under Subsection (14)(b), each party
345 to the proceeding shall comply with the order of the records committee.

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

348 (c) If the records committee orders the governmental entity to produce a record and no
349 appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a
350 record, the governmental entity shall:

351 (i) produce the record; and

352 (ii) file a notice of compliance with the records committee.

353 (d) (i) If the governmental entity that is ordered to produce a record fails to file a notice
354 of compliance or a notice of intent to appeal, the records committee may do either or both of
355 the following:

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

357 (B) send written notice of the governmental entity's noncompliance to:

358 (I) the governor for executive branch entities;

359 (II) the Legislative Management Committee for legislative branch entities; and

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

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

364 Section 7. Section **63G-2-404** is amended to read:

365 **63G-2-404. Judicial review.**

366 ~~[(1)(a) Any party to a proceeding before the records committee may petition for~~

367 ~~judicial review by the district court of the records committee's order.]~~

368 ~~[(b) The petition]~~

369 (1) (a) Except as provided in Subsection (2), a petition for judicial review of an order
370 or decision, as allowed under this part, shall be filed no later than 30 days after the date of the
371 ~~[records committee's] order or decision.~~

372 ~~[(c)] (b)~~ The records committee is a necessary party to ~~[the] a~~ petition for judicial
373 review of a records committee order.

374 ~~[(d)] (c)~~ The executive secretary of the records committee shall be served with notice
375 of ~~[the] a~~ petition for judicial review of a records committee order, in accordance with the Utah
376 Rules of Civil Procedure.

377 (2) ~~[(a)]~~ A requester ~~[may]~~ who files a petition for judicial review ~~[by the district court~~
378 ~~of a governmental entity's determination as specified in]~~ under Subsection 63G-2-402(1)(b)~~[-~~
379 ~~(b) The requester]~~ shall file ~~[a]~~ the petition no later than:

380 ~~[(i)] (a)~~ 30 days after the governmental entity has responded to the ~~[records]~~ record
381 request by either providing the requested records or denying the request in whole or in part;

382 ~~[(ii)] (b)~~ 35 days after the ~~[original]~~ requester submits a record request if the
383 governmental entity ~~[failed]~~ fails to respond to the request; or

384 ~~[(iii)] (c)~~ 45 days after the ~~[original]~~ requester submits a record request ~~[for records]~~ if:

385 ~~[(A)] (i)~~ the circumstances described in Subsection 63G-2-401(1)(b) occur; and

386 ~~[(B)] (ii)~~ the chief administrative officer ~~[failed]~~ fails to make a determination under
387 Section 63G-2-401.

388 (3) ~~[The]~~ A petition for judicial review ~~[shall be]~~ is a complaint governed by the Utah
389 Rules of Civil Procedure and shall contain:

390 (a) the petitioner's name and mailing address;

391 (b) a copy of the records committee order from which the appeal is taken, if the
392 petitioner ~~[brought a prior appeal to the]~~ is seeking judicial review of an order of the records
393 committee;

394 (c) the name and mailing address of the governmental entity that issued the initial
395 determination with a copy of that determination;

396 (d) a request for relief specifying the type and extent of relief requested; and

397 (e) a statement of the reasons why the petitioner is entitled to relief.

398 (4) If the appeal is based on the denial of access to a protected record based on a claim
399 of business confidentiality, the court shall allow the claimant of business confidentiality to
400 provide to the court the reasons for the claim of business confidentiality.

401 (5) All additional pleadings and proceedings in the district court are governed by the
402 Utah Rules of Civil Procedure.

403 (6) The district court may review the disputed records. The review shall be in camera.

404 (7) The court shall:

405 (a) make its decision de novo, but, for a petition seeking judicial review of a records
406 committee order, allow introduction of evidence presented to the records committee;

407 (b) determine all questions of fact and law without a jury; and

408 (c) decide the issue at the earliest practical opportunity.

409 (8) (a) Except as provided in Section 63G-2-406, the court may, upon consideration
410 and weighing of the various interests and public policies pertinent to the classification and
411 disclosure or nondisclosure, order the disclosure of information properly classified as private,
412 controlled, or protected if the interest favoring access is greater than or equal to the interest
413 favoring restriction of access.

414 (b) The court shall consider and, where appropriate, limit the requester's use and
415 further disclosure of the record in order to protect privacy interests in the case of private or
416 controlled records, business confidentiality interests in the case of records protected under
417 Subsections 63G-2-305(1) and (2), and privacy interests or the public interest in the case of
418 other protected records.

419 Section 8. Section 63G-2-501 is amended to read:

420 **63G-2-501. State Records Committee created -- Membership -- Terms --**
421 **Vacancies -- Expenses.**

422 (1) There is created the State Records Committee within the Department of
423 Administrative Services to consist of the following seven individuals:

424 (a) an individual in the private sector whose profession requires the individual to create
425 or manage records that if created by a governmental entity would be private or controlled;

426 (b) the director of the Division of State History or the director's designee;

427 (c) the governor or the governor's designee;

428 (d) two citizen members;

429 (e) one ~~[elected official]~~ person representing political subdivisions, as recommended
430 by the Utah League of Cities and Towns; and

431 (f) one individual representing the news media.

432 (2) The members specified in Subsections (1)(a), (d), (e), and (f) shall be appointed by
433 the governor with the consent of the Senate.

434 (3) (a) Except as required by Subsection (3)(b), as terms of current committee members
435 expire, the governor shall appoint each new member or reappointed member to a four-year
436 term.

437 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
438 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
439 committee members are staggered so that approximately half of the committee is appointed
440 every two years.

441 (c) Each appointed member is eligible for reappointment for one additional term.

442 (4) When a vacancy occurs in the membership for any reason, the replacement shall be
443 appointed for the unexpired term.

444 (5) A member may not receive compensation or benefits for the member's service, but
445 may receive per diem and travel expenses in accordance with:

446 (a) Section [63A-3-106](#);

447 (b) Section [63A-3-107](#); and

448 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
449 [63A-3-107](#).

450 Section 9. Section **63G-2-701** is amended to read:

451 **63G-2-701. Political subdivisions may adopt ordinances in compliance with**
452 **chapter.**

453 (1) As used in this section:

454 (a) "Access denial" means the same as that term is defined in Section [63G-2-400.5](#).

455 (b) "Interested party" means the same as that term is defined in Section [63G-2-400.5](#).

456 (c) "Requester" means the same as that term is defined in Section [63G-2-400.5](#).

457 ~~[(+)]~~ (2) (a) Each political subdivision may adopt an ordinance or a policy applicable
458 throughout its jurisdiction relating to information practices including classification,
459 designation, access, denials, segregation, appeals, management, retention, and amendment of

460 records.

461 (b) The ordinance or policy shall comply with the criteria set forth in this section.

462 (c) If any political subdivision does not adopt and maintain an ordinance or policy, then
463 that political subdivision is subject to this chapter.

464 (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision
465 is subject to ~~[Parts 1 and 3]~~ Part 1, General Provisions, Part 3, Classification, and Sections
466 [63A-12-105](#), [63A-12-107](#), [63G-2-201](#), [63G-2-202](#), [63G-2-205](#), [63G-2-206](#), [63G-2-601](#), and
467 [63G-2-602](#).

468 (e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed
469 with the state archives no later than 30 days after its effective date.

470 (f) The political subdivision shall also report to the state archives all retention
471 schedules, and all designations and classifications applied to record series maintained by the
472 political subdivision.

473 (g) The report required by Subsection ~~[(1)]~~ (2)(f) is notification to state archives of the
474 political subdivision's retention schedules, designations, and classifications. The report is not
475 subject to approval by state archives. If state archives determines that a different retention
476 schedule is needed for state purposes, state archives shall notify the political subdivision of the
477 state's retention schedule for the records and shall maintain the records if requested to do so
478 under Subsection [63A-12-105\(2\)](#).

479 ~~[(2)]~~ (3) Each ordinance or policy relating to information practices shall:

480 (a) provide standards for the classification and designation of the records of the
481 political subdivision as public, private, controlled, or protected in accordance with Part 3 ~~[of~~
482 ~~this chapter]~~, Classification;

483 (b) require the classification of the records of the political subdivision in accordance
484 with those standards;

485 (c) provide guidelines for establishment of fees in accordance with Section [63G-2-203](#);
486 and

487 (d) provide standards for the management and retention of the records of the political
488 subdivision comparable to Section [63A-12-103](#).

489 ~~[(3)]~~ (4) (a) Each ordinance or policy shall establish access criteria, procedures, and
490 response times for requests to inspect, obtain, or amend records of the political subdivision,

491 and time limits for appeals consistent with this chapter.

492 (b) In establishing response times for access requests and time limits for appeals, the
493 political subdivision may establish reasonable time frames different than those set out in
494 Section [63G-2-204](#) and Part 4 ~~[of this chapter]~~, Appeals, if it determines that the resources of
495 the political subdivision are insufficient to meet the requirements of those sections.

496 ~~[(4)]~~ (5) (a) [The] A political subdivision shall establish an appeals process for persons
497 aggrieved by classification, designation, or access decisions.

498 ~~[(b) The policy or ordinance shall provide for:]~~

499 ~~[(i) (A) an appeals board composed of the governing body of the political subdivision;~~
500 ~~or]~~

501 ~~[(B) a separate appeals board composed of members of the governing body and the~~
502 ~~public, appointed by the governing body; and]~~

503 ~~[(ii) the designation of a person as the chief administrative officer for purposes of~~
504 ~~determining appeals under Section [63G-2-401](#) of the governmental entity's determination.]~~

505 ~~[(5) If the requester concurs, the political subdivision may also provide for an~~
506 ~~additional level of administrative review to the records committee in accordance with Section~~
507 ~~[63G-2-403](#).]~~

508 (b) A political subdivision's appeals process shall include a process for a requester or
509 interested party to appeal an access denial to a person designated by the political subdivision as
510 the chief administrative officer for purposes of an appeal under Section [63G-2-401](#).

511 (c) (i) A political subdivision may establish an appeals board to decide an appeal of a
512 decision of the chief administrative officer affirming an access denial.

513 (ii) An appeals board established by a political subdivision shall be composed of three
514 members:

515 (A) one of whom shall be an employee of the political subdivision; and

516 (B) two of whom shall be members of the public, at least one of whom shall have
517 professional experience with requesting or managing records.

518 (iii) If a political subdivision does not establish an appeals board, the political
519 subdivision's appeals process shall provide for an appeal of a chief administrative officer's
520 decision to the records committee, as provided in Section [63G-2-403](#).

521 ~~[(6) Appeals of the decisions of the appeals boards established by political subdivisions~~

522 shall be by]

523 (6) (a) A political subdivision, requester, or interested party may appeal an appeals
524 board decision:

525 (i) to the records committee, as provided in Section 63G-2-403; or

526 (ii) by filing a petition for judicial review [to] with the district court.

527 (b) The contents of [the] a petition for judicial review under Subsection (6)(a)(ii) and
528 the conduct of the proceeding shall be in accordance with Sections 63G-2-402 and 63G-2-404.

529 (c) A person who appeals an appeals board decision to the records committee does not
530 lose or waive the right to seek judicial review of the decision of the records committee.

531 (7) Any political subdivision that adopts an ordinance or policy under Subsection (1)
532 shall forward to state archives a copy and summary description of the ordinance or policy.