

RECORDS COMMITTEES

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Adam Robertson

LONG TITLE

Committee Note:

The Government Operations Interim Committee recommended this bill.

General Description:

This bill creates the Records Management Committee and modifies provisions related to the State Records Committee.

Highlighted Provisions:

This bill:

- ▶ modifies the membership and responsibilities of the State Records Committee;
- ▶ creates the Records Management Committee;
- ▶ establishes provisions for the administration of the Records Management

Committee;

- ▶ transfers certain duties of the State Records Committee to the Records Management

Committee; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **31A-2-207**, as last amended by Laws of Utah 2008, Chapter 382
- 29 **35A-4-503**, as last amended by Laws of Utah 2008, Chapter 382
- 30 **46-4-501**, as last amended by Laws of Utah 2011, Chapter 270
- 31 **63A-12-101**, as last amended by Laws of Utah 2010, Chapter 341
- 32 **63A-12-103**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 33 **63A-12-106**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 34 **63A-12-111**, as last amended by Laws of Utah 2018, Chapter 81
- 35 **63G-2-103**, as amended by Statewide Initiative -- Proposition 4, Nov. 6, 2018
- 36 **63G-2-202**, as last amended by Laws of Utah 2018, Chapter 270
- 37 **63G-2-309**, as last amended by Laws of Utah 2013, Chapter 445
- 38 **63G-2-400.5**, as enacted by Laws of Utah 2015, Chapter 335
- 39 **63G-2-401**, as last amended by Laws of Utah 2017, Chapter 435
- 40 **63G-2-402**, as last amended by Laws of Utah 2015, Chapter 335
- 41 **63G-2-403**, as last amended by Laws of Utah 2018, Chapter 425
- 42 **63G-2-404**, as last amended by Laws of Utah 2017, Chapter 435
- 43 **63G-2-501**, as last amended by Laws of Utah 2015, Chapter 335
- 44 **63G-2-502**, as last amended by Laws of Utah 2018, Chapter 256
- 45 **63G-2-604**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 46 **63G-2-701**, as last amended by Laws of Utah 2017, Chapter 435
- 47 **63G-2-801**, as last amended by Laws of Utah 2013, Chapter 298

48 ENACTS:

- 49 **63A-12-112**, Utah Code Annotated 1953
- 50 **63A-12-113**, Utah Code Annotated 1953



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

53 Section 1. Section **31A-2-207** is amended to read:

54 **31A-2-207. Commissioner's records and reports -- Protection from disclosure of**
55 **certain records.**

56 (1) The commissioner shall maintain all department records that are:

57 (a) required by law;

58 (b) necessary for the effective operation of the department; or

- 59 (c) necessary to maintain a full record of department activities.
- 60 (2) The records of the department may be preserved, managed, stored, and made
61 available for review consistent with:
- 62 (a) another Utah statute;
- 63 (b) the rules made under Section [63A-12-104](#);
- 64 (c) the decisions of the [~~State Records Committee made under Title 63G, Chapter 2,~~
65 ~~Government Records Access and Management Act~~] Records Management Committee made
66 under Section [63A-12-113](#); or
- 67 (d) the needs of the public.
- 68 (3) A department record may not be destroyed, damaged, or disposed of without:
- 69 (a) authorization of the commissioner; and
- 70 (b) compliance with all other applicable laws.
- 71 (4) The commissioner shall maintain a permanent record of the commissioner's
72 proceedings and important activities, including:
- 73 (a) a concise statement of the condition of each insurer examined by the commissioner;
74 and
- 75 (b) a record of all certificates of authority and licenses issued by the commissioner.
- 76 (5) (a) Prior to October 1 of each year, the commissioner shall prepare an annual report
77 to the governor which shall include, for the preceding calendar year, the information
78 concerning the department and the insurance industry which the commissioner believes will be
79 useful to the governor and the public.
- 80 (b) The report required by this Subsection (5) shall include the information required
81 under Chapter 27a, Insurer Receivership Act, and Subsections [31A-2-106\(2\)](#), [31A-2-205\(3\)](#),
82 and [31A-2-208\(3\)](#).
- 83 (c) The commissioner shall make the report required by this Subsection (5) available to
84 the public and industry in electronic format.
- 85 (6) All department records and reports are open to public inspection unless specifically
86 provided otherwise by statute or by Title 63G, Chapter 2, Government Records Access and
87 Management Act.
- 88 (7) On request, the commissioner shall provide to any person certified or uncertified
89 copies of any record in the department that is open to public inspection.

90 (8) Notwithstanding Subsection (6) and Title 63G, Chapter 2, Government Records
91 Access and Management Act, the commissioner shall protect from disclosure any record, as
92 defined in Section [63G-2-103](#), or other document received from an insurance regulator of
93 another jurisdiction:

94 (a) at least to the same extent the record or document is protected from disclosure
95 under the laws applicable to the insurance regulator providing the record or document; or

96 (b) under the same terms and conditions of confidentiality as the National Association
97 of Insurance Commissioners requires as a condition of participating in any of the National
98 Association of Insurance Commissioners' programs.

99 Section 2. Section **35A-4-503** is amended to read:

100 **35A-4-503. Destruction or disposal of records or reports by division -- Procedure.**

101 The division may destroy or dispose of reports or records [~~as have been~~] that are
102 properly recorded or summarized in the payment records of the division, or that are [~~deemed~~]
103 no longer necessary in the proper administration of this chapter in accordance with [~~the~~
104 ~~requirements of the state records committee pursuant to Section [63G-2-502](#)~~] an applicable
105 records retention schedule approved by the Records Management Committee under Section
106 [63A-12-113](#).

107 Section 3. Section **46-4-501** is amended to read:

108 **46-4-501. Creation and retention of electronic records and conversion of written**
109 **records by governmental agencies.**

110 (1) A state governmental agency may, by following the procedures and requirements of
111 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that:

112 (a) identify specific transactions that the agency is willing to conduct by electronic
113 means;

114 (b) identify specific transactions that the agency will never conduct by electronic
115 means;

116 (c) specify the manner and format in which electronic records must be created,
117 generated, sent, communicated, received, and stored, and the systems established for those
118 purposes;

119 (d) if law or rule requires that the electronic records must be signed by electronic
120 means, specify the type of electronic signature required, the manner and format in which the

121 electronic signature must be affixed to the electronic record, and the identity of, or criteria that
122 must be met, by any third party used by a person filing a document to facilitate the process;

123 (e) specify control processes and procedures as appropriate to ensure adequate
124 preservation, disposition, integrity, security, confidentiality, and auditability of electronic
125 records; and

126 (f) identify any other required attributes for electronic records that are specified for
127 corresponding nonelectronic records or that are reasonably necessary under the circumstances.

128 (2) A state governmental agency that makes rules under this section shall submit copies
129 of those rules, and any amendments to those rules, to the chief information officer established
130 by Section 63F-1-201.

131 (3) (a) The chief information officer may prepare model rules and standards relating to
132 electronic transactions that encourage and promote consistency and interoperability with
133 similar requirements adopted by other Utah government agencies, other states, the federal
134 government, and nongovernmental persons interacting with Utah governmental agencies.

135 (b) In preparing those model rules and standards, the chief information officer may
136 specify different levels of standards from which governmental agencies may choose in order to
137 implement the most appropriate standard for a particular application.

138 (c) Nothing in this Subsection (3) requires a state agency to use the model rules and
139 standards prepared by the chief information officer when making rules under this section.

140 (4) Except as provided in Subsection 46-4-301(6), nothing in this chapter requires any
141 state governmental agency to:

142 (a) conduct transactions by electronic means; or

143 (b) use or permit the use of electronic records or electronic signatures.

144 (5) Each state governmental agency shall:

145 (a) establish record retention schedules for any electronic records created or received in
146 an electronic transaction according to the standards developed by the Division of Archives
147 under Subsection 63A-12-101(2)(e); and

148 (b) obtain approval of those schedules from the [~~State Records Committee~~] Records
149 Management Committee as required by Subsection [~~63G-2-502(1)(b)~~] 63A-12-113(1)(b).

150 Section 4. Section 63A-12-101 is amended to read:

151 **63A-12-101. Division of Archives and Records Service created -- Duties.**

- 152 (1) There is created the Division of Archives and Records Service within the
153 Department of Administrative Services.
- 154 (2) The state archives shall:
- 155 (a) administer the state's archives and records management programs, including storage
156 of records, central microphotography programs, and quality control;
- 157 (b) apply fair, efficient, and economical management methods to the collection,
158 creation, use, maintenance, retention, preservation, disclosure, and disposal of records and
159 documents;
- 160 (c) establish standards, procedures, and techniques for the effective management and
161 physical care of records;
- 162 (d) conduct surveys of office operations and recommend improvements in current
163 records management practices, including the use of space, equipment, automation, and supplies
164 used in creating, maintaining, storing, and servicing records;
- 165 (e) establish standards for the preparation of schedules providing for the retention of
166 records of continuing value and for the prompt and orderly disposal of state records no longer
167 possessing sufficient administrative, historical, legal, or fiscal value to warrant further
168 retention;
- 169 (f) establish, maintain, and operate centralized microphotography lab facilities and
170 quality control for the state;
- 171 (g) provide staff and support services to the ~~[records committee]~~ Records Management
172 Committee created in Section [63A-12-112](#) and the State Records Committee created in Section
173 [63G-2-501](#);
- 174 (h) develop training programs to assist records officers and other interested officers and
175 employees of governmental entities to administer this chapter and Title 63G, Chapter 2,
176 Government Records Access and Management Act;
- 177 (i) provide access to public records deposited in the archives;
- 178 (j) administer and maintain the Utah Public Notice Website established under Section
179 [63F-1-701](#);
- 180 (k) provide assistance to any governmental entity in administering this chapter and
181 Title 63G, Chapter 2, Government Records Access and Management Act;
- 182 (l) prepare forms for use by all governmental entities for a person requesting access to

183 a record; and

184 (m) if the department operates the Division of Archives and Records Service as an
185 internal service fund agency in accordance with Section [63A-1-109.5](#), submit to the Rate
186 Committee established in Section [63A-1-114](#):

187 (i) the proposed rate and fee schedule as required by Section [63A-1-114](#); and

188 (ii) other information or analysis requested by the Rate Committee.

189 (3) The state archives may:

190 (a) establish a report and directives management program; and

191 (b) establish a forms management program.

192 (4) The executive director of the Department of Administrative Services may direct the
193 state archives to administer other functions or services consistent with this chapter and Title
194 63G, Chapter 2, Government Records Access and Management Act.

195 Section 5. Section **63A-12-103** is amended to read:

196 **63A-12-103. Duties of governmental entities.**

197 The chief administrative officer of each governmental entity shall:

198 (1) establish and maintain an active, continuing program for the economical and
199 efficient management of the governmental entity's records as provided by this chapter and Title
200 63G, Chapter 2, Government Records Access and Management Act;

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

204 (3) ensure that officers and employees of the governmental entity that receive or
205 process records requests receive required training on the procedures and requirements of this
206 chapter and Title 63G, Chapter 2, Government Records Access and Management Act;

207 (4) make and maintain adequate and proper documentation of the organization,
208 functions, policies, decisions, procedures, and essential transactions of the governmental entity
209 designed to furnish information to protect the legal and financial rights of persons directly
210 affected by the entity's activities;

211 (5) submit to the state archivist proposed schedules of records for final approval by the
212 [~~records committee~~] Records Management Committee created in Section [63A-12-112](#);

213 (6) cooperate with the state archivist in conducting surveys made by the state archivist;

214 (7) comply with rules issued by the Department of Administrative Services as provided
215 by Section [63A-12-104](#);

216 (8) report to the state archives the designation of record series that it maintains;

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

218 and

219 (10) establish and report to the state archives retention schedules for objects that the
220 governmental entity determines are not defined as a record under Section [63G-2-103](#), but that
221 have historical or evidentiary value.

222 Section 6. Section **63A-12-106** is amended to read:

223 **63A-12-106. Certified and microphotographed copies.**

224 (1) Upon demand, the state archives shall furnish certified copies of a record in ~~[its]~~ the
225 state archives's exclusive custody that is classified public or that is otherwise determined to be
226 public under this chapter by the originating governmental entity, the ~~[records committee]~~ State
227 Records Committee created in Section [63G-2-501](#), or a court of law. When certified by the
228 state archivist under the seal of the state archives, ~~[the]~~ a copy has the same legal force and
229 effect as if certified by the originating governmental entity.

230 (2) The state archives may microphotograph records when ~~[it]~~ the state archives
231 determines that microphotography is an efficient and economical way to care, maintain, and
232 preserve the record. A transcript, exemplification, or certified copy of a microphotograph has
233 the same legal force and effect as the original. Upon review and approval of the
234 microphotographed film by the state archivist, the source documents may be destroyed.

235 (3) The state archives may allow another governmental entity to microphotograph
236 records in accordance with standards set by the state archives.

237 Section 7. Section **63A-12-111** is amended to read:

238 **63A-12-111. Government records ombudsman.**

239 (1) (a) The director of the division shall appoint a government records ombudsman.

240 (b) The government records ombudsman may not be a member of the ~~[records~~
241 ~~committee]~~ State Records Committee created in Section [63G-2-501](#).

242 (2) The government records ombudsman shall:

243 (a) be familiar with the provisions of Title 63G, Chapter 2, Government Records
244 Access and Management Act;

245 (b) serve as a resource for a person who is making or responding to a records request or
246 filing an appeal relating to a records request;

247 (c) upon request, attempt to mediate disputes between requestors and responders; and

248 (d) on an annual basis, electronically transmit a written report to the Government
249 Operations Interim Committee on the work performed by the government records ombudsman
250 during the previous year.

251 (3) The government records ombudsman may not testify, or be compelled to testify,
252 before the [~~records committee~~] State Records Committee created in Section 63G-2-501,
253 another administrative body, or a court regarding a matter that the government records
254 ombudsman provided services in relation to under this section.

255 Section 8. Section **63A-12-112** is enacted to read:

256 **63A-12-112. Records Management Committee -- Creation -- Membership --**
257 **Administration.**

258 (1) There is created the Records Management Committee composed of the following
259 five members:

260 (a) the director of the Division of State History or the director's designee;

261 (b) the director of the Division of Archives and Records Services or the director's
262 designee; and

263 (c) three members appointed by the governor as follows:

264 (i) a member of the Utah State Bar who understands public records keeping under Title
265 63G, Chapter 2, Government Records Access and Management Act;

266 (ii) a member with experience in public finance; and

267 (iii) an individual from the private sector whose principal professional responsibilities
268 are to create or manage records.

269 (2) (a) Except as provided in Subsection (2)(b), the governor shall appoint each
270 member to a four-year term.

271 (b) Notwithstanding Subsection (2)(a), the governor shall, at the time of appointment
272 or reappointment, adjust the length of committee members' terms to ensure that the terms of
273 members appointed by the governor are staggered so that approximately half of the committee
274 members appointed by the governor are appointed every two years.

275 (c) Each appointed member of the committee is eligible for reappointment for one

276 additional term.

277 (3) When a vacancy occurs in the membership of the committee for any reason, the
278 applicable appointing authority shall appoint a replacement for the unexpired term.

279 (4) A member of the Records Management Committee may not receive compensation
280 or benefits for the member's service on the committee, but may receive per diem and travel
281 expenses in accordance with:

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

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

284 (c) rules made by the Division of Finance under Sections [63A-3-106](#) and [63A-3-107](#).

285 Section 9. Section **63A-12-113** is enacted to read:

286 **63A-12-113. Records Management Committee -- Duties.**

287 (1) The Records Management Committee shall:

288 (a) appoint a chair from among the committee's members; and

289 (b) review and determine whether to approve each schedule for the retention and
290 disposal of records, including a proposed schedule submitted to the committee under Section
291 [63G-2-604](#), within three months after the day on which the proposed schedule is submitted to
292 the committee.

293 (2) The Records Management Committee may make recommendations to a
294 governmental entity regarding the entity's management of records.

295 (3) Three members of the Records Management Committee are a quorum for the
296 transaction of business.

297 (4) The state archivist shall provide staff and support services for the Records
298 Management Committee.

299 (5) The Office of the Attorney General shall provide counsel to the Records
300 Management Committee.

301 Section 10. Section **63G-2-103** is amended to read:

302 **63G-2-103. Definitions.**

303 As used in this chapter:

304 (1) "Audit" means:

305 (a) a systematic examination of financial, management, program, and related records
306 for the purpose of determining the fair presentation of financial statements, adequacy of

307 internal controls, or compliance with laws and regulations; or

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

311 (2) "Chronological logs" mean the regular and customary summary records of law
312 enforcement agencies and other public safety agencies that show:

313 (a) the time and general nature of police, fire, and paramedic calls made to the agency;
314 and

315 (b) any arrests or jail bookings made by the agency.

316 (3) "Classification," "classify," and their derivative forms mean determining whether a
317 record series, record, or information within a record is public, private, controlled, protected, or
318 exempt from disclosure under Subsection [63G-2-201\(3\)\(b\)](#).

319 (4) (a) "Computer program" means:

320 (i) a series of instructions or statements that permit the functioning of a computer
321 system in a manner designed to provide storage, retrieval, and manipulation of data from the
322 computer system; and

323 (ii) any associated documentation and source material that explain how to operate the
324 computer program.

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

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

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

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

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

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

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

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

337 (6) "Controlled record" means a record containing data on individuals that is controlled

338 as provided by Section [63G-2-304](#).

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

344 (8) "Elected official" means each person elected to a state office, county office,
345 municipal office, school board or school district office, local district office, or special service
346 district office, but does not include judges.

347 (9) "Explosive" means a chemical compound, device, or mixture:

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

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

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

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

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

355 (B) causing death or serious bodily injury.

356 (10) "Government audit agency" means any governmental entity that conducts an audit.

357 (11) (a) "Governmental entity" means:

358 (i) executive department agencies of the state, the offices of the governor, lieutenant
359 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
360 the Board of Examiners, the National Guard, the Career Service Review Office, the State
361 Board of Education, the State Board of Regents, and the State Archives;

362 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
363 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
364 committees, except any political party, group, caucus, or rules or sifting committee of the
365 Legislature;

366 (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar
367 administrative units in the judicial branch;

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

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

373 (b) "Governmental entity" also means:

374 (i) every office, agency, board, bureau, committee, department, advisory board, or
375 commission of an entity listed in Subsection (11)(a) that is funded or established by the
376 government to carry out the public's business;

377 (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative
378 undertaking;

379 (iii) as defined in Section 11-13a-102, a governmental nonprofit corporation;

380 (iv) an association as defined in Section 53G-7-1101; and

381 (v) the Utah Independent Redistricting Commission.

382 (c) "Governmental entity" does not include the Utah Educational Savings Plan created
383 in Section 53B-8a-103.

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

388 (13) "Individual" means a human being.

389 (14) (a) "Initial contact report" means an initial written or recorded report, however
390 titled, prepared by peace officers engaged in public patrol or response duties describing official
391 actions initially taken in response to either a public complaint about or the discovery of an
392 apparent violation of law, which report may describe:

393 (i) the date, time, location, and nature of the complaint, the incident, or offense;

394 (ii) names of victims;

395 (iii) the nature or general scope of the agency's initial actions taken in response to the
396 incident;

397 (iv) the general nature of any injuries or estimate of damages sustained in the incident;

398 (v) the name, address, and other identifying information about any person arrested or
399 charged in connection with the incident; or

400 (vi) the identity of the public safety personnel, except undercover personnel, or
401 prosecuting attorney involved in responding to the initial incident.

402 (b) Initial contact reports do not include follow-up or investigative reports prepared
403 after the initial contact report. However, if the information specified in Subsection (14)(a)
404 appears in follow-up or investigative reports, it may only be treated confidentially if it is
405 private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

406 (15) "Legislative body" means the Legislature.

407 (16) "Notice of compliance" means a statement confirming that a governmental entity
408 has complied with [~~a records committee order~~] an order of the State Records Committee.

409 (17) "Person" means:

410 (a) an individual;

411 (b) a nonprofit or profit corporation;

412 (c) a partnership;

413 (d) a sole proprietorship;

414 (e) other type of business organization; or

415 (f) any combination acting in concert with one another.

416 (18) "Private provider" means any person who contracts with a governmental entity to
417 provide services directly to the public.

418 (19) "Private record" means a record containing data on individuals that is private as
419 provided by Section 63G-2-302.

420 (20) "Protected record" means a record that is classified protected as provided by
421 Section 63G-2-305.

422 (21) "Public record" means a record that is not private, controlled, or protected and that
423 is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

424 (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film,
425 card, tape, recording, electronic data, or other documentary material regardless of physical form
426 or characteristics:

427 (i) that is prepared, owned, received, or retained by a governmental entity or political
428 subdivision; and

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

- 431 (b) "Record" does not mean:
- 432 (i) a personal note or personal communication prepared or received by an employee or
433 officer of a governmental entity:
- 434 (A) in a capacity other than the employee's or officer's governmental capacity; or
435 (B) that is unrelated to the conduct of the public's business;
- 436 (ii) a temporary draft or similar material prepared for the originator's personal use or
437 prepared by the originator for the personal use of an individual for whom the originator is
438 working;
- 439 (iii) material that is legally owned by an individual in the individual's private capacity;
440 (iv) material to which access is limited by the laws of copyright or patent unless the
441 copyright or patent is owned by a governmental entity or political subdivision;
- 442 (v) proprietary software;
- 443 (vi) junk mail or a commercial publication received by a governmental entity or an
444 official or employee of a governmental entity;
- 445 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections
446 of a library open to the public;
- 447 (viii) material that is cataloged, indexed, or inventoried and contained in the collections
448 of a library open to the public, regardless of physical form or characteristics of the material;
- 449 (ix) a daily calendar or other personal note prepared by the originator for the
450 originator's personal use or for the personal use of an individual for whom the originator is
451 working;
- 452 (x) a computer program that is developed or purchased by or for any governmental
453 entity for its own use;
- 454 (xi) a note or internal memorandum prepared as part of the deliberative process by:
- 455 (A) a member of the judiciary;
456 (B) an administrative law judge;
457 (C) a member of the Board of Pardons and Parole; or
458 (D) a member of any other body, other than an association or appeals panel as defined
459 in Section [53G-7-1101](#), charged by law with performing a quasi-judicial function;
- 460 (xii) a telephone number or similar code used to access a mobile communication
461 device that is used by an employee or officer of a governmental entity, provided that the

462 employee or officer of the governmental entity has designated at least one business telephone
463 number that is a public record as provided in Section 63G-2-301;

464 (xiii) information provided by the Public Employees' Benefit and Insurance Program,
465 created in Section 49-20-103, to a county to enable the county to calculate the amount to be
466 paid to a health care provider under Subsection 17-50-319(2)(e)(ii);

467 (xiv) information that an owner of unimproved property provides to a local entity as
468 provided in Section 11-42-205;

469 (xv) a video or audio recording of an interview, or a transcript of the video or audio
470 recording, that is conducted at a Children's Justice Center established under Section 67-5b-102;

471 (xvi) child pornography, as defined by Section 76-5b-103; or

472 (xvii) before final disposition of an ethics complaint occurs, a video or audio recording
473 of the closed portion of a meeting or hearing of:

474 (A) a Senate or House Ethics Committee;

475 (B) the Independent Legislative Ethics Commission;

476 (C) the Independent Executive Branch Ethics Commission, created in Section
477 63A-14-202; or

478 (D) the Political Subdivisions Ethics Review Commission established in Section
479 63A-15-201.

480 (23) "Record series" means a group of records that may be treated as a unit for
481 purposes of designation, description, management, or disposition.

482 [~~(24) "Records committee" means the State Records Committee created in Section~~
483 ~~63G-2-501.~~]

484 [~~(25)~~ (24) "Records officer" means the individual appointed by the chief
485 administrative officer of each governmental entity, or the political subdivision to work with
486 state archives in the care, maintenance, scheduling, designation, classification, disposal, and
487 preservation of records.

488 [~~(26)~~ (25) "Schedule," "scheduling," and their derivative forms mean the process of
489 specifying the length of time each record series should be retained by a governmental entity for
490 administrative, legal, fiscal, or historical purposes and when each record series should be
491 transferred to the state archives or destroyed.

492 [~~(27)~~ (26) "Sponsored research" means research, training, and other sponsored

493 activities as defined by the federal Executive Office of the President, Office of Management
494 and Budget:

495 (a) conducted:

496 (i) by an institution within the state system of higher education defined in Section

497 [53B-1-102](#); and

498 (ii) through an office responsible for sponsored projects or programs; and

499 (b) funded or otherwise supported by an external:

500 (i) person that is not created or controlled by the institution within the state system of

501 higher education; or

502 (ii) federal, state, or local governmental entity.

503 [~~(28)~~] (27) "State archives" means the Division of Archives and Records Service

504 created in Section [63A-12-101](#).

505 [~~(29)~~] (28) "State archivist" means the director of the state archives.

506 (29) "State Records Committee" means the State Records Committee created in

507 Section [63G-2-501](#).

508 (30) "Summary data" means statistical records and compilations that contain data

509 derived from private, controlled, or protected information but that do not disclose private,

510 controlled, or protected information.

511 Section 11. Section **63G-2-202** is amended to read:

512 **63G-2-202. Access to private, controlled, and protected documents.**

513 (1) Except as provided in Subsection (11)(a), a governmental entity:

514 (a) shall, upon request, disclose a private record to:

515 (i) the subject of the record;

516 (ii) the parent or legal guardian of an unemancipated minor who is the subject of the

517 record;

518 (iii) the legal guardian of a legally incapacitated individual who is the subject of the

519 record;

520 (iv) any other individual who:

521 (A) has a power of attorney from the subject of the record;

522 (B) submits a notarized release from the subject of the record or the individual's legal

523 representative dated no more than 90 days before the date the request is made; or

524 (C) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a
525 health care provider, as defined in Section 26-33a-102, if releasing the record or information in
526 the record is consistent with normal professional practice and medical ethics; or

527 (v) any person to whom the record must be provided pursuant to:

528 (A) court order as provided in Subsection (7); or

529 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
530 Powers; and

531 (b) may disclose a private record described in Subsection 63G-2-302(1)(j) or (k),
532 without complying with Section 63G-2-206, to another governmental entity for a purpose
533 related to:

534 (i) voter registration; or

535 (ii) the administration of an election.

536 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:

537 (i) a physician, psychologist, certified social worker, insurance provider or producer, or
538 a government public health agency upon submission of:

539 (A) a release from the subject of the record that is dated no more than 90 days prior to
540 the date the request is made; and

541 (B) a signed acknowledgment of the terms of disclosure of controlled information as
542 provided by Subsection (2)(b); and

543 (ii) any person to whom the record must be disclosed pursuant to:

544 (A) a court order as provided in Subsection (7); or

545 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
546 Powers.

547 (b) A person who receives a record from a governmental entity in accordance with
548 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,
549 including the subject of the record.

550 (3) If there is more than one subject of a private or controlled record, the portion of the
551 record that pertains to another subject shall be segregated from the portion that the requester is
552 entitled to inspect.

553 (4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental
554 entity shall disclose a protected record to:

- 555 (a) the person that submitted the record;
- 556 (b) any other individual who:
- 557 (i) has a power of attorney from all persons, governmental entities, or political
- 558 subdivisions whose interests were sought to be protected by the protected classification; or
- 559 (ii) submits a notarized release from all persons, governmental entities, or political
- 560 subdivisions whose interests were sought to be protected by the protected classification or from
- 561 their legal representatives dated no more than 90 days prior to the date the request is made;
- 562 (c) any person to whom the record must be provided pursuant to:
- 563 (i) a court order as provided in Subsection (7); or
- 564 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
- 565 Powers; or
- 566 (d) the owner of a mobile home park, subject to the conditions of Subsection
- 567 [41-1a-116\(5\)](#).
- 568 (5) Except as provided in Subsection (1)(b), a governmental entity may disclose a
- 569 private, controlled, or protected record to another governmental entity, political subdivision,
- 570 state, the United States, or a foreign government only as provided by Section [63G-2-206](#).
- 571 (6) Before releasing a private, controlled, or protected record, the governmental entity
- 572 shall obtain evidence of the requester's identity.
- 573 (7) A governmental entity shall disclose a record pursuant to the terms of a court order
- 574 signed by a judge from a court of competent jurisdiction, provided that:
- 575 (a) the record deals with a matter in controversy over which the court has jurisdiction;
- 576 (b) the court has considered the merits of the request for access to the record;
- 577 (c) the court has considered and, where appropriate, limited the requester's use and
- 578 further disclosure of the record in order to protect:
- 579 (i) privacy interests in the case of private or controlled records;
- 580 (ii) business confidentiality interests in the case of records protected under Subsection
- 581 [63G-2-305\(1\), \(2\), \(40\)\(a\)\(ii\), or \(40\)\(a\)\(vi\)](#); and
- 582 (iii) privacy interests or the public interest in the case of other protected records;
- 583 (d) to the extent the record is properly classified private, controlled, or protected, the
- 584 interests favoring access, considering limitations thereon, are greater than or equal to the
- 585 interests favoring restriction of access; and

586 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection
587 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

588 (8) (a) Except as provided in Subsection (8)(d), a governmental entity may disclose or
589 authorize disclosure of private or controlled records for research purposes if the governmental
590 entity:

591 (i) determines that the research purpose cannot reasonably be accomplished without
592 use or disclosure of the information to the researcher in individually identifiable form;

593 (ii) determines that:

594 (A) the proposed research is bona fide; and

595 (B) the value of the research is greater than or equal to the infringement upon personal
596 privacy;

597 (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of
598 the records; and

599 (B) requires the removal or destruction of the individual identifiers associated with the
600 records as soon as the purpose of the research project has been accomplished;

601 (iv) prohibits the researcher from:

602 (A) disclosing the record in individually identifiable form, except as provided in
603 Subsection (8)(b); or

604 (B) using the record for purposes other than the research approved by the governmental
605 entity; and

606 (v) secures from the researcher a written statement of the researcher's understanding of
607 and agreement to the conditions of this Subsection (8) and the researcher's understanding that
608 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution
609 under Section 63G-2-801.

610 (b) A researcher may disclose a record in individually identifiable form if the record is
611 disclosed for the purpose of auditing or evaluating the research program and no subsequent use
612 or disclosure of the record in individually identifiable form will be made by the auditor or
613 evaluator except as provided by this section.

614 (c) A governmental entity may require indemnification as a condition of permitting
615 research under this Subsection (8).

616 (d) A governmental entity may not disclose or authorize disclosure of a private record

617 for research purposes as described in this Subsection (8) if the private record is a record
618 described in Subsection 63G-2-302(1)(u).

619 (9) (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity
620 may disclose to persons other than those specified in this section records that are:

621 (i) private under Section 63G-2-302; or

622 (ii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for
623 business confidentiality has been made under Section 63G-2-309.

624 (b) Under Subsection 63G-2-403(11)(b), the [~~records committee~~] State Records
625 Committee may require the disclosure to persons other than those specified in this section of
626 records that are:

627 (i) private under Section 63G-2-302;

628 (ii) controlled under Section 63G-2-304; or

629 (iii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for
630 business confidentiality has been made under Section 63G-2-309.

631 (c) Under Subsection 63G-2-404(7), the court may require the disclosure of records
632 that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected
633 under Section 63G-2-305 to persons other than those specified in this section.

634 (10) A record contained in the Management Information System, created in Section
635 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be
636 disclosed to any person except the person who is alleged in the report to be a perpetrator of
637 abuse, neglect, or dependency.

638 (11) (a) A private record described in Subsection 63G-2-302(2)(f) may only be
639 disclosed as provided in Subsection (1)(e).

640 (b) A protected record described in Subsection 63G-2-305(43) may only be disclosed
641 as provided in Subsection (4)(c) or Section 62A-3-312.

642 (12) (a) A private, protected, or controlled record described in Section 62A-16-301
643 shall be disclosed as required under:

644 (i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and

645 (ii) Subsections 62A-16-302(1) and (6).

646 (b) A record disclosed under Subsection (12)(a) shall retain its character as private,
647 protected, or controlled.

648 Section 12. Section 63G-2-309 is amended to read:

649 **63G-2-309. Confidentiality claims.**

650 (1) (a) (i) Any person who provides to a governmental entity a record that the person
651 believes should be protected under Subsection 63G-2-305(1) or (2) or both Subsections
652 63G-2-305(1) and (2) shall provide with the record:

- 653 (A) a written claim of business confidentiality; and
- 654 (B) a concise statement of reasons supporting the claim of business confidentiality.

655 (ii) Any of the following who provides to an institution within the state system of
656 higher education defined in Section 53B-1-102 a record that the person or governmental entity
657 believes should be protected under Subsection 63G-2-305(40)(a)(ii) or (vi) or both Subsections
658 63G-2-305(40)(a)(ii) and (vi) shall provide the institution within the state system of higher
659 education a written claim of business confidentiality in accordance with Section 53B-16-304:

- 660 (A) a person;
- 661 (B) a federal governmental entity;
- 662 (C) a state governmental entity; or
- 663 (D) a local governmental entity.

664 (b) A person or governmental entity who complies with this Subsection (1) shall be
665 notified by the governmental entity to whom the request for a record is made if:

666 (i) a record claimed to be protected under one of the following is classified public:

- 667 (A) Subsection 63G-2-305(1);
- 668 (B) Subsection 63G-2-305(2);
- 669 (C) Subsection 63G-2-305(40)(a)(ii);
- 670 (D) Subsection 63G-2-305(40)(a)(vi); or
- 671 (E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D);

672 or

673 (ii) the governmental entity to whom the request for a record is made determines that
674 the record claimed to be protected under a provision listed in Subsection (1)(b)(i) should be
675 released after balancing interests under Subsection 63G-2-201(5)(b) or 63G-2-401(6).

676 (2) (a) Except as provided in Subsection (2)(b) or by court order, the governmental
677 entity to whom the request for a record is made may not disclose a record claimed to be
678 protected under a provision listed in Subsection (1)(b)(i) but which the governmental entity or

679 [~~records committee~~] State Records Committee determines should be disclosed until the period
680 in which to bring an appeal expires or the end of the appeals process, including judicial appeal.

681 (b) [~~This~~] Subsection (2)(a) does not apply where the claimant, after notice, has waived
682 the claim by not appealing or intervening before the [~~records committee~~] State Records
683 Committee.

684 (3) Disclosure or acquisition of information under this chapter does not constitute
685 misappropriation under Subsection 13-24-2(2).

686 Section 13. Section 63G-2-400.5 is amended to read:

687 **63G-2-400.5. Definitions.**

688 As used in this part:

689 (1) "Access denial" means a governmental entity's denial, under Subsection
690 63G-2-204(8) or Section 63G-2-205, in whole or in part, of a record request.

691 (2) "Appellate affirmation" means a decision of a chief administrative officer, local
692 appeals board, or [~~records committee~~] State Records Committee affirming an access denial.

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

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

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

699 (6) "Records committee appellant" means:

700 (a) a political subdivision that seeks to appeal a decision of a local appeals board to the
701 [~~records committee~~] State Records Committee; or

702 (b) a requester or interested party who seeks to appeal to the [~~records committee~~] State
703 Records Committee a decision affirming an access denial.

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

705 Section 14. Section 63G-2-401 is amended to read:

706 **63G-2-401. Appeal to chief administrative officer -- Notice of the decision of the**
707 **appeal.**

708 (1) (a) A requester or interested party may appeal an access denial to the chief
709 administrative officer of the governmental entity by filing a notice of appeal with the chief

710 administrative officer within 30 days after:

711 (i) the governmental entity sends a notice of denial under Section 63G-2-205, if the
712 governmental entity denies a record request under Subsection 63G-2-205(1); or

713 (ii) the record request is considered denied under Subsection 63G-2-204(8), if that
714 subsection applies.

715 (b) If a governmental entity claims extraordinary circumstances and specifies the date
716 when the records will be available under Subsection 63G-2-204(3), and, if the requester
717 believes the extraordinary circumstances do not exist or that the date specified is unreasonable,
718 the requester may appeal the governmental entity's claim of extraordinary circumstances or date
719 for compliance to the chief administrative officer by filing a notice of appeal with the chief
720 administrative officer within 30 days after notification of a claim of extraordinary
721 circumstances by the governmental entity, despite the lack of a "determination" or its
722 equivalent under Subsection 63G-2-204(8).

723 (2) A notice of appeal shall contain:

724 (a) the name, mailing address, and daytime telephone number of the requester or
725 interested party; and

726 (b) the relief sought.

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

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

731 (i) send notice of the appeal to the business confidentiality claimant within three
732 business days after receiving notice, except that if notice under this section must be given to
733 more than 35 persons, it shall be given as soon as reasonably possible; and

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

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

740 (5) (a) The chief administrative officer shall make a decision on the appeal within:

741 (i) (A) 10 business days after the chief administrative officer's receipt of the notice of
742 appeal; or

743 (B) five business days after the chief administrative officer's receipt of the notice of
744 appeal, if the requester or interested party demonstrates that an expedited decision benefits the
745 public rather than the requester or interested party; or

746 (ii) 12 business days after the governmental entity sends the notice of appeal to a person
747 who submitted a claim of business confidentiality.

748 (b) (i) If the chief administrative officer fails to make a decision on an appeal of an
749 access denial within the time specified in Subsection (5)(a), the failure is the equivalent of a
750 decision affirming the access denial.

751 (ii) If the chief administrative officer fails to make a decision on an appeal under
752 Subsection (1)(b) within the time specified in Subsection (5)(a), the failure is the equivalent of
753 a decision affirming the claim of extraordinary circumstances or the reasonableness of the date
754 specified when the records will be available.

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

757 (6) Except as provided in Section 63G-2-406, the chief administrative officer may,
758 upon consideration and weighing of the various interests and public policies pertinent to the
759 classification and disclosure or nondisclosure, order the disclosure of information properly
760 classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if
761 the interests favoring access are greater than or equal to the interests favoring restriction of
762 access.

763 (7) (a) The governmental entity shall send written notice of the chief administrative
764 officer's decision to all participants.

765 (b) If the chief administrative officer's decision is to affirm the access denial in whole
766 or in part, the notice under Subsection (7)(a) shall include:

767 (i) a statement that the requester or interested party has the right to appeal the decision,
768 as provided in Section 63G-2-402, to:

769 (A) the ~~[records committee]~~ State Records Committee or district court; or

770 (B) the local appeals board, if the governmental entity is a political subdivision and the
771 governmental entity has established a local appeals board;

772 (ii) the time limits for filing an appeal; and
773 (iii) the name and business address of:
774 (A) the executive secretary of the [~~records committee~~] State Records Committee; and
775 (B) the individual designated as the contact individual for the appeals board, if the
776 governmental entity is a political subdivision that has established an appeals board under
777 Subsection 63G-2-701(5)(c).

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

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

784 Section 15. Section **63G-2-402** is amended to read:

785 **63G-2-402. Appealing a decision of a chief administrative officer.**

786 (1) If the decision of the chief administrative officer of a governmental entity under
787 Section 63G-2-401 is to affirm the denial of a record request, the requester may:

788 (a) (i) appeal the decision to the [~~records committee~~] State Records Committee, as
789 provided in Section 63G-2-403; or

790 (ii) petition for judicial review of the decision in district court, as provided in Section
791 63G-2-404; or

792 (b) appeal the decision to the local appeals board if:

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

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

796 (2) A requester who appeals a chief administrative officer's decision to the [~~records~~
797 ~~committee~~] State Records Committee or a local appeals board does not lose or waive the right
798 to seek judicial review of the decision of the [~~records committee~~] State Records Committee or
799 local appeals board.

800 (3) As provided in Section 63G-2-403, an interested party may appeal to the [~~records~~
801 ~~committee~~] State Records Committee a chief administrative officer's decision under Section
802 63G-2-401 affirming an access denial.

803 Section 16. Section **63G-2-403** is amended to read:

804 **63G-2-403. Appeals to the State Records Committee.**

805 (1) (a) A records committee appellant appeals to the [~~records committee~~] State Records
806 Committee by filing a notice of appeal with the executive secretary of the [~~records committee~~]
807 State Records Committee no later than 30 days after the date of issuance of the decision being
808 appealed.

809 (b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the
810 executive secretary of the [~~records committee~~] State Records Committee no later than 45 days
811 after the day on which the record request is made if:

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

813 (ii) the chief administrative officer fails to make a decision under Section **63G-2-401**.

814 (2) The notice of appeal shall:

815 (a) contain the name, mailing address, and daytime telephone number of the records
816 committee appellant;

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

818 (c) state the relief sought.

819 (3) The records committee appellant:

820 (a) shall, on the day on which the notice of appeal is filed with the [~~records committee~~]
821 State Records Committee, serve a copy of the notice of appeal on:

822 (i) the governmental entity whose access denial is the subject of the appeal, if the
823 records committee appellant is a requester or interested party; or

824 (ii) the requester or interested party who is a party to the local appeals board
825 proceeding that resulted in the decision that the political subdivision is appealing to the
826 [~~records~~] committee, if the records committee appellant is a political subdivision; and

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

829 (4) (a) Except as provided in Subsections (4)(b) and (c), no later than seven business
830 days after receiving a notice of appeal, the executive secretary of the [~~records committee~~] State
831 Records Committee shall:

832 (i) schedule a hearing for the [~~records committee~~] State Records Committee to discuss
833 the appeal at the next regularly scheduled committee meeting falling at least 16 days after the

834 date the notice of appeal is filed but no longer than 64 calendar days after the date the notice of
835 appeal was filed except that the [~~records~~] committee may schedule an expedited hearing upon
836 application of the records committee appellant and good cause shown;

837 (ii) send a copy of the notice of hearing to the records committee appellant; and

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

840 (A) each member of the [~~records committee~~] State Records Committee;

841 (B) the records officer and the chief administrative officer of the governmental entity
842 whose access denial is the subject of the appeal, if the records committee appellant is a
843 requester or interested party;

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

846 (D) all persons who participated in the proceedings before the governmental entity's
847 chief administrative officer, if the appeal is of the chief administrative officer's decision
848 affirming an access denial.

849 (b) (i) The executive secretary of the [~~records committee~~] State Records Committee
850 may decline to schedule a hearing if the record series that is the subject of the appeal has been
851 found by the committee in a previous hearing involving the same governmental entity to be
852 appropriately classified as private, controlled, or protected.

853 (ii) (A) If the executive secretary of the [~~records committee~~] State Records Committee
854 declines to schedule a hearing, the executive secretary [~~of the records committee~~] shall send a
855 notice to the records committee appellant indicating that the request for hearing has been
856 denied and the reason for the denial.

857 (B) The [~~committee~~] State Records Committee shall make rules to implement this
858 section as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

859 (c) The executive secretary of the [~~records committee~~] State Records Committee may
860 schedule a hearing on an appeal to the [~~records committee~~] State Records Committee at a
861 regularly scheduled [~~records committee~~] State Records Committee meeting that is later than the
862 period described in Subsection (4)(a)(i) if that [~~records~~] committee meeting is the first regularly
863 scheduled [~~records committee~~] State Records Committee meeting at which there are fewer than
864 10 appeals scheduled to be heard.

865 (5) (a) No later than five business days before the hearing, a governmental entity shall
866 submit to the executive secretary of the [~~records committee~~] State Records Committee a
867 written statement of facts, reasons, and legal authority in support of the governmental entity's
868 position.

869 (b) The governmental entity shall send a copy of the written statement by first class
870 mail, postage prepaid, to the requester or interested party involved in the appeal. The executive
871 secretary shall forward a copy of the written statement to each member of the [~~records~~
872 ~~committee~~] State Records Committee.

873 (6) (a) No later than 10 business days after the day on which the executive secretary
874 sends the notice of appeal [~~is sent by the executive secretary~~], a person whose legal interests
875 may be substantially affected by the proceeding may file a request for intervention [~~before~~]
876 with the [~~records committee~~] State Records Committee.

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

879 (c) The person seeking intervention shall provide copies of the statement described in
880 Subsection (6)(b) to all parties to the proceedings before the [~~records committee~~] State Records
881 Committee.

882 (7) The [~~records committee~~] State Records Committee shall hold a hearing within the
883 period of time described in Subsection (4).

884 (8) At the hearing, the [~~records committee~~] State Records Committee shall allow the
885 parties to testify, present evidence, and comment on the issues. The [~~records~~] committee may
886 allow other interested persons to comment on the issues.

887 (9) (a) (i) The [~~records committee~~] State Records Committee:

888 (A) may review the disputed records; and

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

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

892 (b) Members of the [~~records committee~~] State Records Committee may not disclose
893 any information or record reviewed by the committee in camera unless the disclosure is
894 otherwise authorized by this chapter.

895 (10) (a) Discovery is prohibited, but the [~~records committee~~] State Records Committee

896 may issue subpoenas or other orders to compel production of necessary evidence.

897 (b) When the subject of a [~~records committee~~] State Records Committee subpoena
898 disobeys or fails to comply with the subpoena, the [~~records~~] committee may file a motion for
899 an order to compel obedience to the subpoena with the district court.

900 (c) (i) The [~~records committee's~~] State Records Committee's review shall be de novo, if
901 the appeal is an appeal from a decision of a chief administrative officer:

902 (A) issued under Section [63G-2-401](#); or

903 (B) issued by a chief administrative officer of a political subdivision that has not
904 established a local appeals board.

905 (ii) For an appeal from a decision of a local appeals board, the [~~records committee~~]
906 State Records Committee shall review and consider the decision of the local appeals board.

907 (11) (a) No later than seven business days after the hearing, the [~~records committee~~]
908 State Records Committee shall issue a signed order:

909 (i) granting the relief sought, in whole or in part; or

910 (ii) upholding the governmental entity's access denial, in whole or in part.

911 (b) Except as provided in Section [63G-2-406](#), the [~~records committee~~] State Records
912 Committee may, upon consideration and weighing of the various interests and public policies
913 pertinent to the classification and disclosure or nondisclosure, order the disclosure of
914 information properly classified as private, controlled, or protected if the public interest favoring
915 access is greater than or equal to the interest favoring restriction of access.

916 (c) In making a determination under Subsection (11)(b), the [~~records committee~~] State
917 Records Committee shall consider and, where appropriate, limit the requester's or interested
918 party's use and further disclosure of the record in order to protect:

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

920 (ii) business confidentiality interests in the case of a record protected under Subsection
921 [63G-2-305](#)(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

923 (12) The order of the [~~records committee~~] State Records Committee shall include:

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

927 (b) a description of the record or portions of the record to which access was ordered or
928 denied, if the description does not disclose private, controlled, or protected information or
929 information exempt from disclosure under Subsection [63G-2-201\(3\)\(b\)](#);

930 (c) a statement that any party to the proceeding before the [~~records committee~~] State
931 Records Committee may appeal the [~~records~~] committee's decision to district court; and

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

935 (13) If the [~~records committee~~] State Records Committee fails to issue a decision
936 within 73 calendar days of the filing of the notice of appeal, that failure is the equivalent of an
937 order denying the appeal. A records committee appellant shall notify the [~~records committee~~]
938 State Records Committee in writing if the records committee appellant considers the appeal
939 denied.

940 (14) A party to a proceeding before the [~~records committee~~] State Records Committee
941 may seek judicial review in district court of a [~~records committee~~] State Records Committee
942 order by filing a petition for review of the [~~records committee~~] order as provided in Section
943 [63G-2-404](#).

944 (15) (a) Unless a notice of intent to appeal is filed under Subsection (15)(b), each party
945 to the proceeding shall comply with the order of the [~~records committee~~] State Records
946 Committee.

947 (b) If a party disagrees with the order of the [~~records committee~~] State Records
948 Committee, that party may file a notice of intent to appeal the order [~~of the records committee~~].

949 (c) If the [~~records committee~~] State Records Committee orders the governmental entity
950 to produce a record and no appeal is filed, or if, as a result of the appeal, the governmental
951 entity is required to produce a record, the governmental entity shall:

952 (i) produce the record; and

953 (ii) file a notice of compliance with the [~~records~~] committee.

954 (d) (i) If the governmental entity that is ordered to produce a record fails to file a notice
955 of compliance or a notice of intent to appeal, the [~~records committee~~] State Records Committee
956 may do either or both of the following:

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

958 (B) send written notice of the governmental entity's noncompliance to the governor.

959 (ii) In imposing a civil penalty, the ~~[records committee]~~ State Records Committee shall
960 consider the gravity and circumstances of the violation, including whether the failure to comply
961 was due to neglect or was willful or intentional.

962 Section 17. Section **63G-2-404** is amended to read:

963 **63G-2-404. Judicial review.**

964 (1) (a) A petition for judicial review of an order or decision, as allowed under this part
965 or in Subsection **63G-2-701(6)(a)(ii)**, shall be filed no later than 30 days after the date of the
966 order or decision.

967 (b) The ~~[records committee]~~ State Records Committee is a necessary party to a petition
968 for judicial review of a ~~[records committee]~~ State Records Committee order.

969 (c) The executive secretary of the ~~[records committee]~~ State Records Committee shall
970 be served with notice of a petition for judicial review of a ~~[records committee]~~ State Records
971 Committee order, in accordance with the Utah Rules of Civil Procedure.

972 (2) A petition for judicial review is a complaint governed by the Utah Rules of Civil
973 Procedure and shall contain:

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

975 (b) a copy of the ~~[records committee]~~ State Records Committee order from which the
976 appeal is taken, if the petitioner is seeking judicial review of an order of the ~~[records~~
977 ~~committee]~~ State Records Committee;

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

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

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

982 (3) If the appeal is based on the denial of access to a protected record based on a claim
983 of business confidentiality, the court shall allow the claimant of business confidentiality to
984 provide to the court the reasons for the claim of business confidentiality.

985 (4) All additional pleadings and proceedings in the district court are governed by the
986 Utah Rules of Civil Procedure.

987 (5) The district court may review the disputed records. The review shall be in camera.

988 (6) (a) The court shall:

989 (i) make the court's decision de novo, but, for a petition seeking judicial review of a
 990 ~~[records committee]~~ State Records Committee order, allow introduction of evidence presented
 991 to the ~~[records committee]~~ State Records Committee;

992 (ii) determine all questions of fact and law without a jury; and

993 (iii) decide the issue at the earliest practical opportunity.

994 (b) In a court's review and decision of a petition seeking judicial review of a ~~[records~~
 995 ~~committee]~~ State Records Committee order, the court may not remand the petition to the
 996 ~~[records committee]~~ State Records Committee for any additional proceedings.

997 (7) (a) Except as provided in Section [63G-2-406](#), the court may, upon consideration
 998 and weighing of the various interests and public policies pertinent to the classification and
 999 disclosure or nondisclosure, order the disclosure of information properly classified as private,
 1000 controlled, or protected if the interest favoring access is greater than or equal to the interest
 1001 favoring restriction of access.

1002 (b) The court shall consider and, where appropriate, limit the requester's use and
 1003 further disclosure of the record in order to protect privacy interests in the case of private or
 1004 controlled records, business confidentiality interests in the case of records protected under
 1005 Subsections [63G-2-305](#)(1) and (2), and privacy interests or the public interest in the case of
 1006 other protected records.

1007 Section 18. Section [63G-2-501](#) is amended to read:

1008 **[63G-2-501. State Records Committee created -- Membership -- Terms --](#)**
 1009 **[Vacancies -- Expenses.](#)**

1010 (1) There is created the State Records Committee within the Department of
 1011 Administrative Services ~~[to consist]~~ consisting of the following seven individuals:

1012 (a) an individual in the private sector whose profession requires the individual to create
 1013 or manage records that, if created by a governmental entity, would be private or controlled;

1014 ~~[(b) the director of the Division of State History or the director's designee;]~~

1015 ~~[(c) the governor or the governor's designee;]~~

1016 (b) an individual with experience with electronic records and databases, as
 1017 recommended by a statewide technology advocacy organization that represents the public,
 1018 private, and nonprofit sectors;

1019 (c) the director of the Division of Archives and Records Services or the director's

1020 designee;

1021 (d) two citizen members;

1022 (e) one person representing political subdivisions, as recommended by the Utah League
1023 of Cities and Towns; and

1024 (f) one individual representing the news media.

1025 (2) The governor shall appoint the members [~~specified~~] described in Subsections
1026 (1)(a), (b), (d), (e), and (f) [~~shall be appointed by the governor~~] with the consent of the Senate.

1027 (3) (a) Except as [~~required by~~] provided in Subsection (3)(b), [~~as terms of current~~
1028 ~~committee members expire;~~] the governor shall appoint each [~~new member or reappointed~~]
1029 member to a four-year term.

1030 (b) Notwithstanding [~~the requirements of~~] Subsection (3)(a), the governor shall, at the
1031 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
1032 committee members are staggered so that approximately half of the committee is appointed
1033 every two years.

1034 (c) Each appointed member is eligible for reappointment for one additional term.

1035 (4) When a vacancy occurs in the membership for any reason, the replacement shall be
1036 appointed for the unexpired term.

1037 (5) A member of the State Records Committee may not receive compensation or
1038 benefits for the member's service on the committee, but may receive per diem and travel
1039 expenses in accordance with:

1040 (a) Section [63A-3-106](#);

1041 (b) Section [63A-3-107](#); and

1042 (c) rules made by the Division of Finance [~~pursuant to~~] under Sections [63A-3-106](#) and
1043 [63A-3-107](#).

1044 Section 19. Section **63G-2-502** is amended to read:

1045 **63G-2-502. State Records Committee -- Duties.**

1046 (1) The [~~records committee~~] State Records Committee shall:

1047 [~~(a) meet at least once every three months;~~]

1048 [~~(b) review and approve schedules for the retention and disposal of records;~~]

1049 [~~(c)~~] (a) hear appeals from determinations of access [~~as provided by~~] under Section
1050 [63G-2-403](#);

1051 ~~[(d)]~~ (b) determine disputes submitted by the state auditor under Subsection
1052 [67-3-1\(17\)\(d\)](#); and

1053 ~~[(e)]~~ (c) appoint a ~~[chairman]~~ chair from among ~~[its]~~ the committee's members.

1054 (2) The ~~[records committee]~~ State Records Committee may:

1055 (a) make rules ~~[to govern its own proceedings as provided by]~~, in accordance with Title
1056 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern the committee's proceedings;
1057 and

1058 (b) by order, after notice and hearing, reassign classification and designation for any
1059 record series by a governmental entity if the governmental entity's classification or designation
1060 is inconsistent with this chapter.

1061 (3) (a) The ~~[records committee]~~ State Records Committee shall annually appoint an
1062 executive secretary to provide administrative support to the ~~[records]~~ committee.

1063 (b) The executive secretary ~~[may not serve as]~~ is not a voting member of the
1064 committee.

1065 (4) Five members of the ~~[records committee]~~ State Records Committee are a quorum
1066 for the transaction of business.

1067 (5) The state archives shall provide staff and support services for the ~~[records~~
1068 ~~committee]~~ State Records Committee.

1069 (6) If the ~~[records committee]~~ State Records Committee reassigns the classification or
1070 designation of a record or record series under Subsection (2)(b), any affected governmental
1071 entity or any other interested person may appeal the reclassification or redesignation to the
1072 district court. The district court shall hear the matter de novo.

1073 (7) The Office of the Attorney General shall provide counsel to the ~~[records committee~~
1074 ~~and shall review proposed retention schedules]~~ State Records Committee.

1075 Section 20. Section **63G-2-604** is amended to read:

1076 **63G-2-604. Retention and disposition of records.**

1077 (1) (a) Except for a governmental entity that is permitted to maintain ~~[its]~~ the
1078 governmental entity's own retention schedules under Part 7, Applicability to Political
1079 Subdivisions, the Judiciary, and the Legislature, each governmental entity shall file with the
1080 ~~[State Records Committee]~~ Records Management Committee created in Section [63A-12-112](#) a
1081 proposed schedule for the retention and disposition of each type of material that is defined as a

1082 record under this chapter.

1083 (b) After a retention schedule is reviewed and approved by the [~~State Records~~
1084 ~~Committee~~] Records Management Committee under Subsection [~~63G-2-502(1)(b)~~]
1085 63A-12-113(1)(b), the governmental entity shall maintain and destroy records in accordance
1086 with the retention schedule.

1087 (c) If a governmental entity subject to the provisions of this section has not received an
1088 approved retention schedule from the Records Management Committee for a specific type of
1089 material that is classified as a record under this chapter, the model retention schedule
1090 maintained by the state archivist shall govern the retention and destruction of that type of
1091 material.

1092 (2) A retention schedule that is filed with or approved by the [~~State Records~~
1093 ~~Committee~~] Records Management Committee under the requirements of this section is a public
1094 record.

1095 Section 21. Section **63G-2-701** is amended to read:

1096 **63G-2-701. Political subdivisions may adopt ordinances in compliance with**
1097 **chapter -- Appeal process.**

1098 (1) As used in this section:

1099 (a) "Access denial" means the same as that term is defined in Section 63G-2-400.5.

1100 (b) "Interested party" means the same as that term is defined in Section 63G-2-400.5.

1101 (c) "Requester" means the same as that term is defined in Section 63G-2-400.5.

1102 (2) (a) Each political subdivision may adopt an ordinance or a policy applicable
1103 throughout its jurisdiction relating to information practices including classification,
1104 designation, access, denials, segregation, appeals, management, retention, and amendment of
1105 records.

1106 (b) The ordinance or policy shall comply with the criteria set forth in this section.

1107 (c) If any political subdivision does not adopt and maintain an ordinance or policy, then
1108 that political subdivision is subject to this chapter.

1109 (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision
1110 is subject to Part 1, General Provisions, Part 3, Classification, and Sections 63A-12-105,
1111 63A-12-107, 63G-2-201, 63G-2-202, 63G-2-205, 63G-2-206, 63G-2-601, and 63G-2-602.

1112 (e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed

1113 with the state archives no later than 30 days after its effective date.

1114 (f) The political subdivision shall also report to the state archives all retention
1115 schedules, and all designations and classifications applied to record series maintained by the
1116 political subdivision.

1117 (g) The report required by Subsection (2)(f) is notification to state archives of the
1118 political subdivision's retention schedules, designations, and classifications. The report is not
1119 subject to approval by state archives. If state archives determines that a different retention
1120 schedule is needed for state purposes, state archives shall notify the political subdivision of the
1121 state's retention schedule for the records and shall maintain the records if requested to do so
1122 under Subsection [63A-12-105\(2\)](#).

1123 (3) Each ordinance or policy relating to information practices shall:

1124 (a) provide standards for the classification and designation of the records of the
1125 political subdivision as public, private, controlled, or protected in accordance with Part 3,
1126 Classification;

1127 (b) require the classification of the records of the political subdivision in accordance
1128 with those standards;

1129 (c) provide guidelines for establishment of fees in accordance with Section [63G-2-203](#);
1130 and

1131 (d) provide standards for the management and retention of the records of the political
1132 subdivision comparable to Section [63A-12-103](#).

1133 (4) (a) Each ordinance or policy shall establish access criteria, procedures, and
1134 response times for requests to inspect, obtain, or amend records of the political subdivision,
1135 and time limits for appeals consistent with this chapter.

1136 (b) In establishing response times for access requests and time limits for appeals, the
1137 political subdivision may establish reasonable time frames different than those set out in
1138 Section [63G-2-204](#) and Part 4, Appeals, if it determines that the resources of the political
1139 subdivision are insufficient to meet the requirements of those sections.

1140 (5) (a) A political subdivision shall establish an appeals process for persons aggrieved
1141 by classification, designation, or access decisions.

1142 (b) A political subdivision's appeals process shall include a process for a requester or
1143 interested party to appeal an access denial to a person designated by the political subdivision as

1144 the chief administrative officer for purposes of an appeal under Section [63G-2-401](#).

1145 (c) (i) A political subdivision may establish an appeals board to decide an appeal of a
1146 decision of the chief administrative officer affirming an access denial.

1147 (ii) An appeals board established by a political subdivision shall be composed of three
1148 members:

1149 (A) one of whom shall be an employee of the political subdivision; and

1150 (B) two of whom shall be members of the public who are not employed by or officials
1151 of a governmental entity, at least one of whom shall have professional experience with
1152 requesting or managing records.

1153 (iii) If a political subdivision establishes an appeals board, any appeal of a decision of a
1154 chief administrative officer shall be made to the appeals board.

1155 (iv) If a political subdivision does not establish an appeals board, the political
1156 subdivision's appeals process shall provide for an appeal of a chief administrative officer's
1157 decision to the ~~[records committee]~~ State Records Committee, as provided in Section
1158 [63G-2-403](#).

1159 (6) (a) A political subdivision or requester may appeal an appeals board decision:

1160 (i) to the ~~[records committee]~~ State Records Committee, as provided in Section
1161 [63G-2-403](#); or

1162 (ii) by filing a petition for judicial review with the district court.

1163 (b) The contents of a petition for judicial review under Subsection (6)(a)(ii) and the
1164 conduct of the proceeding shall be in accordance with Sections [63G-2-402](#) and [63G-2-404](#).

1165 (c) A person who appeals an appeals board decision to the ~~[records committee]~~ State
1166 Records Committee does not lose or waive the right to seek judicial review of the decision of
1167 the ~~[records committee]~~ State Records Committee.

1168 (7) Any political subdivision that adopts an ordinance or policy under Subsection (1)
1169 shall forward to state archives a copy and summary description of the ordinance or policy.

1170 Section 22. Section **63G-2-801** is amended to read:

1171 **63G-2-801. Criminal penalties.**

1172 (1) (a) A public employee or other person who has lawful access to any private,
1173 controlled, or protected record under this chapter, and who intentionally discloses, provides a
1174 copy of, or improperly uses a private, controlled, or protected record knowing that the

1175 disclosure or use is prohibited under this chapter, is, except as provided in Subsection
1176 53-5-708(1)(c), guilty of a class B misdemeanor.

1177 (b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released
1178 private, controlled, or protected information in the reasonable belief that the use or disclosure
1179 of the information was necessary to expose a violation of law involving government
1180 corruption, abuse of office, or misappropriation of public funds or property.

1181 (c) It is a defense to prosecution under Subsection (1)(a) that the record could have
1182 lawfully been released to the recipient if it had been properly classified.

1183 (d) It is a defense to prosecution under Subsection (1)(a) that the public employee or
1184 other person disclosed, provided, or used the record based on a good faith belief that the
1185 disclosure, provision, or use was in accordance with the law.

1186 (2) (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a
1187 copy of any private, controlled, or protected record to which the person is not legally entitled is
1188 guilty of a class B misdemeanor.

1189 (b) No person shall be guilty under Subsection (2)(a) who receives the record,
1190 information, or copy after the fact and without prior knowledge of or participation in the false
1191 pretenses, bribery, or theft.

1192 (3) (a) A public employee who intentionally refuses to release a record, the disclosure
1193 of which the employee knows is required by law, is guilty of a class B misdemeanor.

1194 (b) It is a defense to prosecution under Subsection (3)(a) that the public employee's
1195 failure to release the record was based on a good faith belief that the public employee was
1196 acting in accordance with the requirements of law.

1197 (c) A public employee who intentionally refuses to release a record, the disclosure of
1198 which the employee knows is required by a final unappealed order from a government entity,
1199 the [~~records committee~~] State Records Committee, or a court is guilty of a class B
1200 misdemeanor.