

1 **RECORDS COMMITTEES**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4
5 **LONG TITLE**

6 **General Description:**

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

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ modifies the membership and responsibilities of the State Records Committee;
- 12 ▶ creates the Records Management Committee;
- 13 ▶ establishes provisions for the administration of the Records Management
14 Committee;
- 15 ▶ transfers certain duties of the State Records Committee to the Records Management
16 Committee; and
- 17 ▶ makes technical and conforming changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

- 24 **31A-2-207**, as last amended by Laws of Utah 2008, Chapter 382
- 25 **35A-4-503**, as last amended by Laws of Utah 2008, Chapter 382
- 26 **46-4-501**, as last amended by Laws of Utah 2011, Chapter 270
- 27 **63A-12-101**, as last amended by Laws of Utah 2010, Chapter 341
- 28 **63A-12-103**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 29 **63A-12-106**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 30 **63A-12-111**, as last amended by Laws of Utah 2018, Chapter 81
- 31 **63G-2-103**, as last amended by Laws of Utah 2018, Chapters 25, 285, 415, and 461
- 32 **63G-2-202**, as last amended by Laws of Utah 2018, Chapter 270

- 33 **63G-2-309**, as last amended by Laws of Utah 2013, Chapter 445
 34 **63G-2-400.5**, as enacted by Laws of Utah 2015, Chapter 335
 35 **63G-2-401**, as last amended by Laws of Utah 2017, Chapter 435
 36 **63G-2-402**, as last amended by Laws of Utah 2015, Chapter 335
 37 **63G-2-403**, as last amended by Laws of Utah 2018, Chapter 425
 38 **63G-2-404**, as last amended by Laws of Utah 2017, Chapter 435
 39 **63G-2-501**, as last amended by Laws of Utah 2015, Chapter 335
 40 **63G-2-502**, as last amended by Laws of Utah 2018, Chapter 256
 41 **63G-2-604**, as renumbered and amended by Laws of Utah 2008, Chapter 382
 42 **63G-2-701**, as last amended by Laws of Utah 2017, Chapter 435
 43 **63G-2-801**, as last amended by Laws of Utah 2013, Chapter 298

44 ENACTS:

45 **63A-12-112**, Utah Code Annotated 1953

46 **63A-12-113**, Utah Code Annotated 1953

47

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

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

50 **31A-2-207. Commissioner's records and reports -- Protection from disclosure of**
 51 **certain records.**

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

53 (a) required by law;

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

55 (c) necessary to maintain a full record of department activities.

56 (2) The records of the department may be preserved, managed, stored, and made
 57 available for review consistent with:

58 (a) another Utah statute;

59 (b) the rules made under Section 63A-12-104;

60 (c) the decisions of the [~~State Records Committee made under Title 63G, Chapter 2,~~
 61 ~~Government Records Access and Management Act~~] Records Management Committee made

62 under Section 63A-12-113; or

63 (d) the needs of the public.

64 (3) A department record may not be destroyed, damaged, or disposed of without:

65 (a) authorization of the commissioner; and

66 (b) compliance with all other applicable laws.

67 (4) The commissioner shall maintain a permanent record of the commissioner's
68 proceedings and important activities, including:

69 (a) a concise statement of the condition of each insurer examined by the commissioner;
70 and

71 (b) a record of all certificates of authority and licenses issued by the commissioner.

72 (5) (a) Prior to October 1 of each year, the commissioner shall prepare an annual report
73 to the governor which shall include, for the preceding calendar year, the information
74 concerning the department and the insurance industry which the commissioner believes will be
75 useful to the governor and the public.

76 (b) The report required by this Subsection (5) shall include the information required
77 under Chapter 27a, Insurer Receivership Act, and Subsections 31A-2-106(2), 31A-2-205(3),
78 and 31A-2-208(3).

79 (c) The commissioner shall make the report required by this Subsection (5) available to
80 the public and industry in electronic format.

81 (6) All department records and reports are open to public inspection unless specifically
82 provided otherwise by statute or by Title 63G, Chapter 2, Government Records Access and
83 Management Act.

84 (7) On request, the commissioner shall provide to any person certified or uncertified
85 copies of any record in the department that is open to public inspection.

86 (8) Notwithstanding Subsection (6) and Title 63G, Chapter 2, Government Records
87 Access and Management Act, the commissioner shall protect from disclosure any record, as
88 defined in Section 63G-2-103, or other document received from an insurance regulator of
89 another jurisdiction:

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

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

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

96 **35A-4-503. Destruction or disposal of records or reports by division -- Procedure.**

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

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

104 **46-4-501. Creation and retention of electronic records and conversion of written**
105 **records by governmental agencies.**

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

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

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

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

115 (d) if law or rule requires that the electronic records must be signed by electronic
116 means, specify the type of electronic signature required, the manner and format in which the
117 electronic signature must be affixed to the electronic record, and the identity of, or criteria that
118 must be met, by any third party used by a person filing a document to facilitate the process;

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

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

124 (2) A state governmental agency that makes rules under this section shall submit copies
125 of those rules, and any amendments to those rules, to the chief information officer established

126 by Section 63F-1-201.

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

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

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

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

138 (a) conduct transactions by electronic means; or

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

140 (5) Each state governmental agency shall:

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

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

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

147 **63A-12-101. Division of Archives and Records Service created -- Duties.**

148 (1) There is created the Division of Archives and Records Service within the
149 Department of Administrative Services.

150 (2) The state archives shall:

151 (a) administer the state's archives and records management programs, including storage
152 of records, central microphotography programs, and quality control;

153 (b) apply fair, efficient, and economical management methods to the collection,
154 creation, use, maintenance, retention, preservation, disclosure, and disposal of records and
155 documents;

156 (c) establish standards, procedures, and techniques for the effective management and

- 157 physical care of records;
- 158 (d) conduct surveys of office operations and recommend improvements in current
159 records management practices, including the use of space, equipment, automation, and supplies
160 used in creating, maintaining, storing, and servicing records;
- 161 (e) establish standards for the preparation of schedules providing for the retention of
162 records of continuing value and for the prompt and orderly disposal of state records no longer
163 possessing sufficient administrative, historical, legal, or fiscal value to warrant further
164 retention;
- 165 (f) establish, maintain, and operate centralized microphotography lab facilities and
166 quality control for the state;
- 167 (g) provide staff and support services to the [~~records committee~~] Records Management
168 Committee created in Section 63A-12-112 and the State Records Committee created in Section
169 63G-2-501;
- 170 (h) develop training programs to assist records officers and other interested officers and
171 employees of governmental entities to administer this chapter and Title 63G, Chapter 2,
172 Government Records Access and Management Act;
- 173 (i) provide access to public records deposited in the archives;
- 174 (j) administer and maintain the Utah Public Notice Website established under Section
175 63F-1-701;
- 176 (k) provide assistance to any governmental entity in administering this chapter and
177 Title 63G, Chapter 2, Government Records Access and Management Act;
- 178 (l) prepare forms for use by all governmental entities for a person requesting access to
179 a record; and
- 180 (m) if the department operates the Division of Archives and Records Service as an
181 internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate
182 Committee established in Section 63A-1-114:
- 183 (i) the proposed rate and fee schedule as required by Section 63A-1-114; and
184 (ii) other information or analysis requested by the Rate Committee.
- 185 (3) The state archives may:
- 186 (a) establish a report and directives management program; and
187 (b) establish a forms management program.

188 (4) The executive director of the Department of Administrative Services may direct the
189 state archives to administer other functions or services consistent with this chapter and Title
190 63G, Chapter 2, Government Records Access and Management Act.

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

192 **63A-12-103. Duties of governmental entities.**

193 The chief administrative officer of each governmental entity shall:

194 (1) establish and maintain an active, continuing program for the economical and
195 efficient management of the governmental entity's records as provided by this chapter and Title
196 63G, Chapter 2, Government Records Access and Management Act;

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

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

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

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

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

210 (7) comply with rules issued by the Department of Administrative Services as provided
211 by Section 63A-12-104;

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

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

214 and

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

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

219 **63A-12-106. Certified and microphotographed copies.**

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

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

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

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

234 **63A-12-111. Government records ombudsman.**

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

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

238 (2) The government records ombudsman shall:

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

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

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

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

247 (3) The government records ombudsman may not testify, or be compelled to testify,
248 before the ~~[records committee]~~ State Records Committee created in Section 63G-2-501,
249 another administrative body, or a court regarding a matter that the government records

250 ombudsman provided services in relation to under this section.

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

252 **63A-12-112. Records Management Committee -- Creation -- Membership --**
253 **Administration.**

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

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

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

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

260 (i) a member of the Utah State Bar who understands public records keeping under Title
261 63G, Chapter 2, Government Records Access and Management Act;

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

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

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

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

271 (c) Each appointed member of the committee is eligible for reappointment for one
272 additional term.

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

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

278 (a) Section 63A-3-106;

279 (b) Section 63A-3-107; and

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

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

282 **63A-12-113. Records Management Committee -- Duties.**

283 (1) The Records Management Committee shall:

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

285 (b) review and determine whether to approve each schedule for the retention and

286 disposal of records, including a proposed schedule submitted to the committee under Section

287 63G-2-604, within three months after the day on which the proposed schedule is submitted to

288 the committee.

289 (2) The Records Management Committee may make recommendations to a

290 governmental entity regarding the entity's management of records.

291 (3) Three members of the Records Management Committee are a quorum for the

292 transaction of business.

293 (4) The state archivist shall provide staff and support services for the Records

294 Management Committee.

295 (5) The Office of the Attorney General shall provide counsel to the Records

296 Management Committee.

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

298 **63G-2-103. Definitions.**

299 As used in this chapter:

300 (1) "Audit" means:

301 (a) a systematic examination of financial, management, program, and related records

302 for the purpose of determining the fair presentation of financial statements, adequacy of

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

304 (b) a systematic examination of program procedures and operations for the purpose of

305 determining their effectiveness, economy, efficiency, and compliance with statutes and

306 regulations.

307 (2) "Chronological logs" mean the regular and customary summary records of law

308 enforcement agencies and other public safety agencies that show:

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

310 and

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

312 (3) "Classification," "classify," and their derivative forms mean determining whether a
313 record series, record, or information within a record is public, private, controlled, protected, or
314 exempt from disclosure under Subsection 63G-2-201(3)(b).

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

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

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

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

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

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

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

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

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

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

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

333 (6) "Controlled record" means a record containing data on individuals that is controlled
334 as provided by Section 63G-2-304.

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

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

- 343 (9) "Explosive" means a chemical compound, device, or mixture:
- 344 (a) commonly used or intended for the purpose of producing an explosion; and
- 345 (b) that contains oxidizing or combustive units or other ingredients in proportions,
- 346 quantities, or packing so that:
- 347 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
- 348 compound or mixture may cause a sudden generation of highly heated gases; and
- 349 (ii) the resultant gaseous pressures are capable of:
- 350 (A) producing destructive effects on contiguous objects; or
- 351 (B) causing death or serious bodily injury.
- 352 (10) "Government audit agency" means any governmental entity that conducts an audit.
- 353 (11) (a) "Governmental entity" means:
- 354 (i) executive department agencies of the state, the offices of the governor, lieutenant
- 355 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
- 356 the Board of Examiners, the National Guard, the Career Service Review Office, the State
- 357 Board of Education, the State Board of Regents, and the State Archives;
- 358 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
- 359 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
- 360 committees, except any political party, group, caucus, or rules or sifting committee of the
- 361 Legislature;
- 362 (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar
- 363 administrative units in the judicial branch;
- 364 (iv) any state-funded institution of higher education or public education; or
- 365 (v) any political subdivision of the state, but, if a political subdivision has adopted an
- 366 ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this
- 367 chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or
- 368 as specified in any other section of this chapter that specifically refers to political subdivisions.
- 369 (b) "Governmental entity" also means:
- 370 (i) every office, agency, board, bureau, committee, department, advisory board, or
- 371 commission of an entity listed in Subsection (11)(a) that is funded or established by the
- 372 government to carry out the public's business;
- 373 (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative

374 undertaking;

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

376 (iv) an association as defined in Section 53G-7-1101.

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

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

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

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

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

389 (ii) names of victims;

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

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

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

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

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

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

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

404 (17) "Person" means:

- 405 (a) an individual;
- 406 (b) a nonprofit or profit corporation;
- 407 (c) a partnership;
- 408 (d) a sole proprietorship;
- 409 (e) other type of business organization; or
- 410 (f) any combination acting in concert with one another.
- 411 (18) "Private provider" means any person who contracts with a governmental entity to
- 412 provide services directly to the public.
- 413 (19) "Private record" means a record containing data on individuals that is private as
- 414 provided by Section 63G-2-302.
- 415 (20) "Protected record" means a record that is classified protected as provided by
- 416 Section 63G-2-305.
- 417 (21) "Public record" means a record that is not private, controlled, or protected and that
- 418 is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).
- 419 (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film,
- 420 card, tape, recording, electronic data, or other documentary material regardless of physical form
- 421 or characteristics:
- 422 (i) that is prepared, owned, received, or retained by a governmental entity or political
- 423 subdivision; and
- 424 (ii) where all of the information in the original is reproducible by photocopy or other
- 425 mechanical or electronic means.
- 426 (b) "Record" does not mean:
- 427 (i) a personal note or personal communication prepared or received by an employee or
- 428 officer of a governmental entity:
- 429 (A) in a capacity other than the employee's or officer's governmental capacity; or
- 430 (B) that is unrelated to the conduct of the public's business;
- 431 (ii) a temporary draft or similar material prepared for the originator's personal use or
- 432 prepared by the originator for the personal use of an individual for whom the originator is
- 433 working;
- 434 (iii) material that is legally owned by an individual in the individual's private capacity;
- 435 (iv) material to which access is limited by the laws of copyright or patent unless the

- 436 copyright or patent is owned by a governmental entity or political subdivision;
- 437 (v) proprietary software;
- 438 (vi) junk mail or a commercial publication received by a governmental entity or an
439 official or employee of a governmental entity;
- 440 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections
441 of a library open to the public;
- 442 (viii) material that is cataloged, indexed, or inventoried and contained in the collections
443 of a library open to the public, regardless of physical form or characteristics of the material;
- 444 (ix) a daily calendar or other personal note prepared by the originator for the
445 originator's personal use or for the personal use of an individual for whom the originator is
446 working;
- 447 (x) a computer program that is developed or purchased by or for any governmental
448 entity for its own use;
- 449 (xi) a note or internal memorandum prepared as part of the deliberative process by:
- 450 (A) a member of the judiciary;
- 451 (B) an administrative law judge;
- 452 (C) a member of the Board of Pardons and Parole; or
- 453 (D) a member of any other body, other than an association or appeals panel as defined
454 in Section 53G-7-1101, charged by law with performing a quasi-judicial function;
- 455 (xii) a telephone number or similar code used to access a mobile communication
456 device that is used by an employee or officer of a governmental entity, provided that the
457 employee or officer of the governmental entity has designated at least one business telephone
458 number that is a public record as provided in Section 63G-2-301;
- 459 (xiii) information provided by the Public Employees' Benefit and Insurance Program,
460 created in Section 49-20-103, to a county to enable the county to calculate the amount to be
461 paid to a health care provider under Subsection 17-50-319(2)(e)(ii);
- 462 (xiv) information that an owner of unimproved property provides to a local entity as
463 provided in Section 11-42-205;
- 464 (xv) a video or audio recording of an interview, or a transcript of the video or audio
465 recording, that is conducted at a Children's Justice Center established under Section 67-5b-102;
- 466 (xvi) child pornography, as defined by Section 76-5b-103; or

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

469 (A) a Senate or House Ethics Committee;

470 (B) the Independent Legislative Ethics Commission;

471 (C) the Independent Executive Branch Ethics Commission, created in Section
472 63A-14-202; or

473 (D) the Political Subdivisions Ethics Review Commission established in Section
474 63A-15-201.

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

477 [~~(24) "Records committee" means the State Records Committee created in Section~~
478 ~~63G-2-501.~~]

479 [(~~25~~)] (24) "Records officer" means the individual appointed by the chief
480 administrative officer of each governmental entity, or the political subdivision to work with
481 state archives in the care, maintenance, scheduling, designation, classification, disposal, and
482 preservation of records.

483 [(~~26~~)] (25) "Schedule," "scheduling," and their derivative forms mean the process of
484 specifying the length of time each record series should be retained by a governmental entity for
485 administrative, legal, fiscal, or historical purposes and when each record series should be
486 transferred to the state archives or destroyed.

487 [(~~27~~)] (26) "Sponsored research" means research, training, and other sponsored
488 activities as defined by the federal Executive Office of the President, Office of Management
489 and Budget:

490 (a) conducted:

491 (i) by an institution within the state system of higher education defined in Section
492 53B-1-102; and

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

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

495 (i) person that is not created or controlled by the institution within the state system of
496 higher education; or

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

498 ~~[(28)]~~ (27) "State archives" means the Division of Archives and Records Service
499 created in Section 63A-12-101.

500 ~~[(29)]~~ (28) "State archivist" means the director of the state archives.

501 (29) "State Records Committee" means the State Records Committee created in
502 Section 63G-2-501.

503 (30) "Summary data" means statistical records and compilations that contain data
504 derived from private, controlled, or protected information but that do not disclose private,
505 controlled, or protected information.

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

507 **63G-2-202. Access to private, controlled, and protected documents.**

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

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

510 (i) the subject of the record;

511 (ii) the parent or legal guardian of an unemancipated minor who is the subject of the
512 record;

513 (iii) the legal guardian of a legally incapacitated individual who is the subject of the
514 record;

515 (iv) any other individual who:

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

517 (B) submits a notarized release from the subject of the record or the individual's legal
518 representative dated no more than 90 days before the date the request is made; or

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

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

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

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

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

- 529 (i) voter registration; or
- 530 (ii) the administration of an election.
- 531 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:
- 532 (i) a physician, psychologist, certified social worker, insurance provider or producer, or
- 533 a government public health agency upon submission of:
- 534 (A) a release from the subject of the record that is dated no more than 90 days prior to
- 535 the date the request is made; and
- 536 (B) a signed acknowledgment of the terms of disclosure of controlled information as
- 537 provided by Subsection (2)(b); and
- 538 (ii) any person to whom the record must be disclosed pursuant to:
- 539 (A) a court order as provided in Subsection (7); or
- 540 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
- 541 Powers.
- 542 (b) A person who receives a record from a governmental entity in accordance with
- 543 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,
- 544 including the subject of the record.
- 545 (3) If there is more than one subject of a private or controlled record, the portion of the
- 546 record that pertains to another subject shall be segregated from the portion that the requester is
- 547 entitled to inspect.
- 548 (4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental
- 549 entity shall disclose a protected record to:
- 550 (a) the person that submitted the record;
- 551 (b) any other individual who:
- 552 (i) has a power of attorney from all persons, governmental entities, or political
- 553 subdivisions whose interests were sought to be protected by the protected classification; or
- 554 (ii) submits a notarized release from all persons, governmental entities, or political
- 555 subdivisions whose interests were sought to be protected by the protected classification or from
- 556 their legal representatives dated no more than 90 days prior to the date the request is made;
- 557 (c) any person to whom the record must be provided pursuant to:
- 558 (i) a court order as provided in Subsection (7); or
- 559 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

560 Powers; or

561 (d) the owner of a mobile home park, subject to the conditions of Subsection
562 41-1a-116(5).

563 (5) Except as provided in Subsection (1)(b), a governmental entity may disclose a
564 private, controlled, or protected record to another governmental entity, political subdivision,
565 state, the United States, or a foreign government only as provided by Section 63G-2-206.

566 (6) Before releasing a private, controlled, or protected record, the governmental entity
567 shall obtain evidence of the requester's identity.

568 (7) A governmental entity shall disclose a record pursuant to the terms of a court order
569 signed by a judge from a court of competent jurisdiction, provided that:

570 (a) the record deals with a matter in controversy over which the court has jurisdiction;

571 (b) the court has considered the merits of the request for access to the record;

572 (c) the court has considered and, where appropriate, limited the requester's use and
573 further disclosure of the record in order to protect:

574 (i) privacy interests in the case of private or controlled records;

575 (ii) business confidentiality interests in the case of records protected under Subsection
576 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

577 (iii) privacy interests or the public interest in the case of other protected records;

578 (d) to the extent the record is properly classified private, controlled, or protected, the
579 interests favoring access, considering limitations thereon, are greater than or equal to the
580 interests favoring restriction of access; and

581 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection
582 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

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

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

588 (ii) determines that:

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

590 (B) the value of the research is greater than or equal to the infringement upon personal

591 privacy;

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

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

596 (iv) prohibits the researcher from:

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

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

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

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

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

611 (d) A governmental entity may not disclose or authorize disclosure of a private record
612 for research purposes as described in this Subsection (8) if the private record is a record
613 described in Subsection 63G-2-302(1)(u).

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

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

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

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

622 (i) private under Section 63G-2-302;
623 (ii) controlled under Section 63G-2-304; or
624 (iii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for
625 business confidentiality has been made under Section 63G-2-309.

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

629 (10) A record contained in the Management Information System, created in Section
630 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be
631 disclosed to any person except the person who is alleged in the report to be a perpetrator of
632 abuse, neglect, or dependency.

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

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

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

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

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

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

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

644 **63G-2-309. Confidentiality claims.**

645 (1) (a) (i) Any person who provides to a governmental entity a record that the person
646 believes should be protected under Subsection 63G-2-305(1) or (2) or both Subsections
647 63G-2-305(1) and (2) shall provide with the record:

648 (A) a written claim of business confidentiality; and

649 (B) a concise statement of reasons supporting the claim of business confidentiality.

650 (ii) Any of the following who provides to an institution within the state system of
651 higher education defined in Section 53B-1-102 a record that the person or governmental entity
652 believes should be protected under Subsection 63G-2-305(40)(a)(ii) or (vi) or both Subsections

653 63G-2-305(40)(a)(ii) and (vi) shall provide the institution within the state system of higher
654 education a written claim of business confidentiality in accordance with Section 53B-16-304:

- 655 (A) a person;
656 (B) a federal governmental entity;
657 (C) a state governmental entity; or
658 (D) a local governmental entity.

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

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

- 662 (A) Subsection 63G-2-305(1);
663 (B) Subsection 63G-2-305(2);
664 (C) Subsection 63G-2-305(40)(a)(ii);
665 (D) Subsection 63G-2-305(40)(a)(vi); or
666 (E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D);

667 or

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

671 (2) (a) Except as provided in Subsection (2)(b) or by court order, the governmental
672 entity to whom the request for a record is made may not disclose a record claimed to be
673 protected under a provision listed in Subsection (1)(b)(i) but which the governmental entity or
674 ~~[records committee]~~ State Records Committee determines should be disclosed until the period
675 in which to bring an appeal expires or the end of the appeals process, including judicial appeal.

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

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

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

682 **63G-2-400.5. Definitions.**

683 As used in this part:

684 (1) "Access denial" means a governmental entity's denial, under Subsection
685 63G-2-204(8) or Section 63G-2-205, in whole or in part, of a record request.

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

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

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

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

694 (6) "Records committee appellant" means:

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

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

699 (7) "Requester" means a person who submits a record request to a governmental entity.
700 Section 14. Section **63G-2-401** is amended to read:

701 **63G-2-401. Appeal to chief administrative officer -- Notice of the decision of the**
702 **appeal.**

703 (1) (a) A requester or interested party may appeal an access denial to the chief
704 administrative officer of the governmental entity by filing a notice of appeal with the chief
705 administrative officer within 30 days after:

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

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

710 (b) If a governmental entity claims extraordinary circumstances and specifies the date
711 when the records will be available under Subsection 63G-2-204(3), and, if the requester
712 believes the extraordinary circumstances do not exist or that the date specified is unreasonable,
713 the requester may appeal the governmental entity's claim of extraordinary circumstances or date
714 for compliance to the chief administrative officer by filing a notice of appeal with the chief

715 administrative officer within 30 days after notification of a claim of extraordinary
716 circumstances by the governmental entity, despite the lack of a "determination" or its
717 equivalent under Subsection 63G-2-204(8).

718 (2) A notice of appeal shall contain:

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

721 (b) the relief sought.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

767 (ii) the time limits for filing an appeal; and

768 (iii) the name and business address of:

769 (A) the executive secretary of the ~~[records committee]~~ State Records Committee; and

770 (B) the individual designated as the contact individual for the appeals board, if the
771 governmental entity is a political subdivision that has established an appeals board under
772 Subsection 63G-2-701(5)(c).

773 (8) A person aggrieved by a governmental entity's classification or designation
774 determination under this chapter, but who is not requesting access to the records, may appeal
775 that determination using the procedures provided in this section. If a nonrequester is the only
776 appellant, the procedures provided in this section shall apply, except that the decision on the

777 appeal shall be made within 30 days after receiving the notice of appeal.

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

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

780 **63G-2-402. Appealing a decision of a chief administrative officer.**

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

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

785 (ii) petition for judicial review of the decision in district court, as provided in Section
786 63G-2-404; or

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

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

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

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

795 (3) As provided in Section 63G-2-403, an interested party may appeal to the ~~[records~~
796 ~~committee]~~ State Records Committee a chief administrative officer's decision under Section
797 63G-2-401 affirming an access denial.

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

799 **63G-2-403. Appeals to the State Records Committee.**

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

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

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

- 808 (ii) the chief administrative officer fails to make a decision under Section 63G-2-401.
- 809 (2) The notice of appeal shall:
- 810 (a) contain the name, mailing address, and daytime telephone number of the records
811 committee appellant;
- 812 (b) be accompanied by a copy of the decision being appealed; and
- 813 (c) state the relief sought.
- 814 (3) The records committee appellant:
- 815 (a) shall, on the day on which the notice of appeal is filed with the [~~records committee~~]
816 State Records Committee, serve a copy of the notice of appeal on:
- 817 (i) the governmental entity whose access denial is the subject of the appeal, if the
818 records committee appellant is a requester or interested party; or
- 819 (ii) the requester or interested party who is a party to the local appeals board
820 proceeding that resulted in the decision that the political subdivision is appealing to the
821 [~~records~~] committee, if the records committee appellant is a political subdivision; and
- 822 (b) may file a short statement of facts, reasons, and legal authority in support of the
823 appeal.
- 824 (4) (a) Except as provided in Subsections (4)(b) and (c), no later than seven business
825 days after receiving a notice of appeal, the executive secretary of the [~~records committee~~] State
826 Records Committee shall:
- 827 (i) schedule a hearing for the [~~records committee~~] State Records Committee to discuss
828 the appeal at the next regularly scheduled committee meeting falling at least 16 days after the
829 date the notice of appeal is filed but no longer than 64 calendar days after the date the notice of
830 appeal was filed except that the [~~records~~] committee may schedule an expedited hearing upon
831 application of the records committee appellant and good cause shown;
- 832 (ii) send a copy of the notice of hearing to the records committee appellant; and
- 833 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing
834 to:
- 835 (A) each member of the [~~records committee~~] State Records Committee;
- 836 (B) the records officer and the chief administrative officer of the governmental entity
837 whose access denial is the subject of the appeal, if the records committee appellant is a
838 requester or interested party;

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

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

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

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

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

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

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

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

868 (6) (a) No later than 10 business days after the day on which the executive secretary
869 sends the notice of appeal [~~is sent by the executive secretary~~], a person whose legal interests

870 may be substantially affected by the proceeding may file a request for intervention [~~before~~]
871 with the [~~records committee~~] State Records Committee.

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

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

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

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

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

883 (A) may review the disputed records; and

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

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

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

890 (10) (a) Discovery is prohibited, but the [~~records committee~~] State Records Committee
891 may issue subpoenas or other orders to compel production of necessary evidence.

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

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

897 (A) issued under Section 63G-2-401; or

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

900 (ii) For an appeal from a decision of a local appeals board, the [~~records committee~~]

901 State Records Committee shall review and consider the decision of the local appeals board.

902 (11) (a) No later than seven business days after the hearing, the [~~records committee~~]

903 State Records Committee shall issue a signed order:

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

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

906 (b) Except as provided in Section 63G-2-406, the [~~records committee~~] State Records

907 Committee may, upon consideration and weighing of the various interests and public policies

908 pertinent to the classification and disclosure or nondisclosure, order the disclosure of

909 information properly classified as private, controlled, or protected if the public interest favoring

910 access is greater than or equal to the interest favoring restriction of access.

911 (c) In making a determination under Subsection (11)(b), the [~~records committee~~] State

912 Records Committee shall consider and, where appropriate, limit the requester's or interested

913 party's use and further disclosure of the record in order to protect:

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

915 (ii) business confidentiality interests in the case of a record protected under Subsection

916 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

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

919 (a) a statement of reasons for the decision, including citations to this chapter, court rule

920 or order, another state statute, federal statute, or federal regulation that governs disclosure of

921 the record, if the citations do not disclose private, controlled, or protected information;

922 (b) a description of the record or portions of the record to which access was ordered or

923 denied, if the description does not disclose private, controlled, or protected information or

924 information exempt from disclosure under Subsection 63G-2-201(3)(b);

925 (c) a statement that any party to the proceeding before the [~~records committee~~] State

926 Records Committee may appeal the [~~records~~] committee's decision to district court; and

927 (d) a brief summary of the appeals process, the time limits for filing an appeal, and a

928 notice that in order to protect its rights on appeal, the party may wish to seek advice from an

929 attorney.

930 (13) If the [~~records committee~~] State Records Committee fails to issue a decision

931 within 73 calendar days of the filing of the notice of appeal, that failure is the equivalent of an

932 order denying the appeal. A records committee appellant shall notify the [~~records committee~~]
933 State Records Committee in writing if the records committee appellant considers the appeal
934 denied.

935 (14) A party to a proceeding before the [~~records committee~~] State Records Committee
936 may seek judicial review in district court of a [~~records committee~~] State Records Committee
937 order by filing a petition for review of the [~~records committee~~] order as provided in Section
938 63G-2-404.

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

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

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

947 (i) produce the record; and

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

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

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

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

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

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

958 **63G-2-404. Judicial review.**

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

962 (b) The [~~records committee~~] State Records Committee is a necessary party to a petition

963 for judicial review of a [~~records committee~~] State Records Committee order.

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

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

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

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

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

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

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

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

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

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

983 (6) (a) The court shall:

984 (i) make the court's decision de novo, but, for a petition seeking judicial review of a

985 [~~records committee~~] State Records Committee order, allow introduction of evidence presented
986 to the [~~records committee~~] State Records Committee;

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

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

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

992 (7) (a) Except as provided in Section 63G-2-406, the court may, upon consideration
993 and weighing of the various interests and public policies pertinent to the classification and

994 disclosure or nondisclosure, order the disclosure of information properly classified as private,
995 controlled, or protected if the interest favoring access is greater than or equal to the interest
996 favoring restriction of access.

997 (b) The court shall consider and, where appropriate, limit the requester's use and
998 further disclosure of the record in order to protect privacy interests in the case of private or
999 controlled records, business confidentiality interests in the case of records protected under
1000 Subsections 63G-2-305(1) and (2), and privacy interests or the public interest in the case of
1001 other protected records.

1002 Section 18. Section **63G-2-501** is amended to read:

1003 **63G-2-501. State Records Committee created -- Membership -- Terms --**
1004 **Vacancies -- Expenses.**

1005 (1) There is created the State Records Committee within the Department of
1006 Administrative Services [~~to consist~~] consisting of the following seven individuals:

1007 (a) an individual in the private sector whose profession requires the individual to create
1008 or manage records that, if created by a governmental entity, would be private or controlled;
1009 [~~(b) the director of the Division of State History or the director's designee;~~]

1010 [~~(c) the governor or the governor's designee;~~]

1011 (b) an individual with experience with electronic records and databases, as
1012 recommended by a statewide technology advocacy organization that represents the public,
1013 private, and nonprofit sectors;

1014 (c) the director of the Division of Archives and Records Services or the director's
1015 designee;

1016 (d) two citizen members;

1017 (e) one person representing political subdivisions, as recommended by the Utah League
1018 of Cities and Towns; and

1019 (f) one individual representing the news media.

1020 (2) The governor shall appoint the members [~~specified~~] described in Subsections
1021 (1)(a), (b), (d), (e), and (f) [~~shall be appointed by the governor~~] with the consent of the Senate.

1022 (3) (a) Except as [~~required by~~] provided in Subsection (3)(b), [~~as terms of current~~
1023 ~~committee members expire;~~] the governor shall appoint each [~~new member or reappointed~~]
1024 member to a four-year term.

1025 (b) Notwithstanding ~~[the requirements of]~~ Subsection (3)(a), the governor shall, at the
 1026 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
 1027 committee members are staggered so that approximately half of the committee is appointed
 1028 every two years.

1029 (c) Each appointed member is eligible for reappointment for one additional term.

1030 (4) When a vacancy occurs in the membership for any reason, the replacement shall be
 1031 appointed for the unexpired term.

1032 (5) A member of the State Records Committee may not receive compensation or
 1033 benefits for the member's service on the committee, but may receive per diem and travel
 1034 expenses in accordance with:

1035 (a) Section 63A-3-106;

1036 (b) Section 63A-3-107; and

1037 (c) rules made by the Division of Finance ~~[pursuant to]~~ under Sections 63A-3-106 and
 1038 63A-3-107.

1039 Section 19. Section **63G-2-502** is amended to read:

1040 **63G-2-502. State Records Committee -- Duties.**

1041 (1) The ~~[records committee]~~ State Records Committee shall:

1042 ~~[(a) meet at least once every three months;]~~

1043 ~~[(b) review and approve schedules for the retention and disposal of records;]~~

1044 ~~[(c)]~~ (a) hear appeals from determinations of access ~~[as provided by]~~ under Section
 1045 63G-2-403;

1046 ~~[(d)]~~ (b) determine disputes submitted by the state auditor under Subsection
 1047 67-3-1(17)(d); and

1048 ~~[(e)]~~ (c) appoint a ~~[chairman]~~ chair from among ~~[its]~~ the committee's members.

1049 (2) The ~~[records committee]~~ State Records Committee may:

1050 (a) make rules ~~[to govern its own proceedings as provided by]~~, in accordance with Title
 1051 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern the committee's proceedings;
 1052 and

1053 (b) by order, after notice and hearing, reassign classification and designation for any
 1054 record series by a governmental entity if the governmental entity's classification or designation
 1055 is inconsistent with this chapter.

1056 (3) (a) The [~~records committee~~] State Records Committee shall annually appoint an
1057 executive secretary to provide administrative support to the [records] committee.

1058 (b) The executive secretary [~~may not serve as~~] is not a voting member of the
1059 committee.

1060 (4) Five members of the [~~records committee~~] State Records Committee are a quorum
1061 for the transaction of business.

1062 (5) The state archives shall provide staff and support services for the [~~records~~
1063 ~~committee~~] State Records Committee.

1064 (6) If the [~~records committee~~] State Records Committee reassigns the classification or
1065 designation of a record or record series under Subsection (2)(b), any affected governmental
1066 entity or any other interested person may appeal the reclassification or redesignation to the
1067 district court. The district court shall hear the matter de novo.

1068 (7) The Office of the Attorney General shall provide counsel to the [~~records committee~~
1069 ~~and shall review proposed retention schedules~~] State Records Committee.

1070 Section 20. Section **63G-2-604** is amended to read:

1071 **63G-2-604. Retention and disposition of records.**

1072 (1) (a) Except for a governmental entity that is permitted to maintain [~~its~~] the
1073 governmental entity's own retention schedules under Part 7, Applicability to Political
1074 Subdivisions, the Judiciary, and the Legislature, each governmental entity shall file with the
1075 [~~State Records Committee~~] Records Management Committee created in Section 63A-12-112 a
1076 proposed schedule for the retention and disposition of each type of material that is defined as a
1077 record under this chapter.

1078 (b) After a retention schedule is reviewed and approved by the [~~State Records~~
1079 ~~Committee~~] Records Management Committee under Subsection [~~63G-2-502(1)(b)~~]
1080 63A-12-113(1)(b), the governmental entity shall maintain and destroy records in accordance
1081 with the retention schedule.

1082 (c) If a governmental entity subject to the provisions of this section has not received an
1083 approved retention schedule from the Records Management Committee for a specific type of
1084 material that is classified as a record under this chapter, the model retention schedule
1085 maintained by the state archivist shall govern the retention and destruction of that type of
1086 material.

1087 (2) A retention schedule that is filed with or approved by the [~~State Records~~
1088 ~~Committee~~] Records Management Committee under the requirements of this section is a public
1089 record.

1090 Section 21. Section **63G-2-701** is amended to read:

1091 **63G-2-701. Political subdivisions may adopt ordinances in compliance with**
1092 **chapter -- Appeal process.**

1093 (1) As used in this section:

1094 (a) "Access denial" means the same as that term is defined in Section 63G-2-400.5.

1095 (b) "Interested party" means the same as that term is defined in Section 63G-2-400.5.

1096 (c) "Requester" means the same as that term is defined in Section 63G-2-400.5.

1097 (2) (a) Each political subdivision may adopt an ordinance or a policy applicable
1098 throughout its jurisdiction relating to information practices including classification,
1099 designation, access, denials, segregation, appeals, management, retention, and amendment of
1100 records.

1101 (b) The ordinance or policy shall comply with the criteria set forth in this section.

1102 (c) If any political subdivision does not adopt and maintain an ordinance or policy, then
1103 that political subdivision is subject to this chapter.

1104 (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision
1105 is subject to Part 1, General Provisions, Part 3, Classification, and Sections 63A-12-105,
1106 63A-12-107, 63G-2-201, 63G-2-202, 63G-2-205, 63G-2-206, 63G-2-601, and 63G-2-602.

1107 (e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed
1108 with the state archives no later than 30 days after its effective date.

1109 (f) The political subdivision shall also report to the state archives all retention
1110 schedules, and all designations and classifications applied to record series maintained by the
1111 political subdivision.

1112 (g) The report required by Subsection (2)(f) is notification to state archives of the
1113 political subdivision's retention schedules, designations, and classifications. The report is not
1114 subject to approval by state archives. If state archives determines that a different retention
1115 schedule is needed for state purposes, state archives shall notify the political subdivision of the
1116 state's retention schedule for the records and shall maintain the records if requested to do so
1117 under Subsection 63A-12-105(2).

- 1118 (3) Each ordinance or policy relating to information practices shall:
- 1119 (a) provide standards for the classification and designation of the records of the
- 1120 political subdivision as public, private, controlled, or protected in accordance with Part 3,
- 1121 Classification;
- 1122 (b) require the classification of the records of the political subdivision in accordance
- 1123 with those standards;
- 1124 (c) provide guidelines for establishment of fees in accordance with Section 63G-2-203;
- 1125 and
- 1126 (d) provide standards for the management and retention of the records of the political
- 1127 subdivision comparable to Section 63A-12-103.
- 1128 (4) (a) Each ordinance or policy shall establish access criteria, procedures, and
- 1129 response times for requests to inspect, obtain, or amend records of the political subdivision,
- 1130 and time limits for appeals consistent with this chapter.
- 1131 (b) In establishing response times for access requests and time limits for appeals, the
- 1132 political subdivision may establish reasonable time frames different than those set out in
- 1133 Section 63G-2-204 and Part 4, Appeals, if it determines that the resources of the political
- 1134 subdivision are insufficient to meet the requirements of those sections.
- 1135 (5) (a) A political subdivision shall establish an appeals process for persons aggrieved
- 1136 by classification, designation, or access decisions.
- 1137 (b) A political subdivision's appeals process shall include a process for a requester or
- 1138 interested party to appeal an access denial to a person designated by the political subdivision as
- 1139 the chief administrative officer for purposes of an appeal under Section 63G-2-401.
- 1140 (c) (i) A political subdivision may establish an appeals board to decide an appeal of a
- 1141 decision of the chief administrative officer affirming an access denial.
- 1142 (ii) An appeals board established by a political subdivision shall be composed of three
- 1143 members:
- 1144 (A) one of whom shall be an employee of the political subdivision; and
- 1145 (B) two of whom shall be members of the public who are not employed by or officials
- 1146 of a governmental entity, at least one of whom shall have professional experience with
- 1147 requesting or managing records.
- 1148 (iii) If a political subdivision establishes an appeals board, any appeal of a decision of a

1149 chief administrative officer shall be made to the appeals board.

1150 (iv) If a political subdivision does not establish an appeals board, the political
1151 subdivision's appeals process shall provide for an appeal of a chief administrative officer's
1152 decision to the ~~[records committee]~~ State Records Committee, as provided in Section
1153 63G-2-403.

1154 (6) (a) A political subdivision or requester may appeal an appeals board decision:

1155 (i) to the ~~[records committee]~~ State Records Committee, as provided in Section
1156 63G-2-403; or

1157 (ii) by filing a petition for judicial review with the district court.

1158 (b) The contents of a petition for judicial review under Subsection (6)(a)(ii) and the
1159 conduct of the proceeding shall be in accordance with Sections 63G-2-402 and 63G-2-404.

1160 (c) A person who appeals an appeals board decision to the ~~[records committee]~~ State
1161 Records Committee does not lose or waive the right to seek judicial review of the decision of
1162 the ~~[records committee]~~ State Records Committee.

1163 (7) Any political subdivision that adopts an ordinance or policy under Subsection (1)
1164 shall forward to state archives a copy and summary description of the ordinance or policy.

1165 Section 22. Section **63G-2-801** is amended to read:

1166 **63G-2-801. Criminal penalties.**

1167 (1) (a) A public employee or other person who has lawful access to any private,
1168 controlled, or protected record under this chapter, and who intentionally discloses, provides a
1169 copy of, or improperly uses a private, controlled, or protected record knowing that the
1170 disclosure or use is prohibited under this chapter, is, except as provided in Subsection
1171 53-5-708(1)(c), guilty of a class B misdemeanor.

1172 (b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released
1173 private, controlled, or protected information in the reasonable belief that the use or disclosure
1174 of the information was necessary to expose a violation of law involving government
1175 corruption, abuse of office, or misappropriation of public funds or property.

1176 (c) It is a defense to prosecution under Subsection (1)(a) that the record could have
1177 lawfully been released to the recipient if it had been properly classified.

1178 (d) It is a defense to prosecution under Subsection (1)(a) that the public employee or
1179 other person disclosed, provided, or used the record based on a good faith belief that the

1180 disclosure, provision, or use was in accordance with the law.

1181 (2) (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a
1182 copy of any private, controlled, or protected record to which the person is not legally entitled is
1183 guilty of a class B misdemeanor.

1184 (b) No person shall be guilty under Subsection (2)(a) who receives the record,
1185 information, or copy after the fact and without prior knowledge of or participation in the false
1186 pretenses, bribery, or theft.

1187 (3) (a) A public employee who intentionally refuses to release a record, the disclosure
1188 of which the employee knows is required by law, is guilty of a class B misdemeanor.

1189 (b) It is a defense to prosecution under Subsection (3)(a) that the public employee's
1190 failure to release the record was based on a good faith belief that the public employee was
1191 acting in accordance with the requirements of law.

1192 (c) A public employee who intentionally refuses to release a record, the disclosure of
1193 which the employee knows is required by a final unappealed order from a government entity,
1194 the [~~records committee~~] State Records Committee, or a court is guilty of a class B
1195 misdemeanor.