

Effective 5/12/2015

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

- (1)
 - (a) A requester or interested party may appeal an access denial to the chief administrative officer of the governmental entity by filing a notice of appeal with the chief administrative officer within 30 days after:
 - (i) the governmental entity sends a notice of denial under Section 63G-2-205, if the governmental entity denies a record request under Subsection 63G-2-205(1); or
 - (ii) the record request is considered denied under Subsection 63G-2-204(8), if that subsection applies.
 - (b) If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63G-2-204(3), and, if the requester believes the extraordinary circumstances do not exist or that the date specified is unreasonable, the requester may appeal the governmental entity's claim of extraordinary circumstances or date for compliance to the chief administrative officer by filing a notice of appeal with the chief administrative officer within 30 days after notification of a claim of extraordinary circumstances by the governmental entity, despite the lack of a "determination" or its equivalent under Subsection 63G-2-204(8).
- (2) A notice of appeal shall contain:
 - (a) the name, mailing address, and daytime telephone number of the requester or interested party; and
 - (b) the relief sought.
- (3) The requester or interested party may file a short statement of facts, reasons, and legal authority in support of the appeal.
- (4)
 - (a) If the appeal involves a record that is the subject of a business confidentiality claim under Section 63G-2-309, the chief administrative officer shall:
 - (i) send notice of the appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible; and
 - (ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester or interested party within three business days after receiving notice of the appeal.
 - (b) The business confidentiality claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality.
- (5)
 - (a) The chief administrative officer shall make a decision on the appeal within:
 - (i) five business days after the chief administrative officer's receipt of the notice of appeal; or
 - (ii) 12 business days after the governmental entity sends the notice of appeal to a person who submitted a claim of business confidentiality.
 - (b)
 - (i) If the chief administrative officer fails to make a decision on an appeal of an access denial within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the access denial.
 - (ii) If the chief administrative officer fails to make a decision on an appeal under Subsection (1)(b) within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the claim of extraordinary circumstances or the reasonableness of the date specified when the records will be available.

- (c) The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.
- (6) Except as provided in Section 63G-2-406, the chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if the interests favoring access are greater than or equal to the interests favoring restriction of access.
- (7)
 - (a) The governmental entity shall send written notice of the chief administrative officer's decision to all participants.
 - (b) If the chief administrative officer's decision is to affirm the access denial in whole or in part, the notice under Subsection (7)(a) shall include:
 - (i) a statement that the requester or interested party has the right to appeal the decision, as provided in Section 63G-2-402, to:
 - (A) the records committee or district court; or
 - (B) the local appeals board, if the governmental entity is a political subdivision and the governmental entity has established a local appeals board;
 - (ii) the time limits for filing an appeal; and
 - (iii) the name and business address of:
 - (A) the executive secretary of the records committee; and
 - (B) the individual designated as the contact individual for the appeals board, if the governmental entity is a political subdivision that has established an appeals board under Subsection 63G-2-701(5)(c).
- (8) A person aggrieved by a governmental entity's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the decision on the appeal shall be made within 30 days after receiving the notice of appeal.
- (9) The duties of the chief administrative officer under this section may be delegated.

Amended by Chapter 335, 2015 General Session