

Effective 5/7/2025

63G-2-403 Appeals to the director of the Government Records Office.

- (1)
 - (a) A records appellant appeals to the director by filing a notice of appeal with the director no later than 30 days after the day on which the decision being appealed is issued.
 - (b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the director no later than 45 days after the day on which the record request is made if:
 - (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and
 - (ii) the chief administrative officer fails to make a decision under Section 63G-2-401.
 - (c) The time for a requester to file a notice of appeal under Subsection (1)(a) or (b) is suspended for the period of time that:
 - (i) begins on the date the requester submits a request under Section 63A-12-204 for the government records ombudsman to mediate the dispute between the requester and the governmental entity; and
 - (ii) ends the earlier of the following dates:
 - (A) the date that the government records ombudsman certifies in writing that the mediation is concluded; or
 - (B) the date that the government records ombudsman certifies in writing that the mediation did not occur or was not concluded because of a lack of the required consent.
- (2) The notice of appeal shall:
 - (a) contain the name, mailing address, and daytime telephone number of the records appellant;
 - (b) be accompanied by a copy of the decision being appealed; and
 - (c) state the relief sought.
- (3) The records appellant:
 - (a) shall, on the day on which the notice of appeal is filed with the director, serve a copy of the notice of appeal on:
 - (i) the governmental entity whose access denial or fee waiver denial is the subject of the appeal, if the records appellant is a requester or interested party; or
 - (ii) the requester or interested party who is a party to the local appeals board proceeding that resulted in the decision that the political subdivision is appealing to the director, if the records appellant is a political subdivision; and
 - (b) may file a short statement of facts, reasons, and legal authority in support of the appeal.
- (4)
 - (a) Except as provided in Subsections (4)(b) and (c), no later than seven business days after receiving a notice of appeal, the director shall:
 - (i) schedule a hearing for the director to discuss the appeal at the next regularly scheduled hearing date that is at least 16 calendar days after the date the notice of appeal is filed but no later than 64 calendar days after the date the notice of appeal is filed, except that the director may schedule an expedited hearing upon application of the records appellant and good cause shown;
 - (ii) send a copy of the notice of hearing to the records appellant; and
 - (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:
 - (A) the records officer and the chief administrative officer of the governmental entity whose access denial is the subject of the appeal, if the records appellant is a requester or interested party;
 - (B) any person who made a business confidentiality claim under Section 63G-2-309 for a record that is the subject of the appeal; and

- (C) all persons who participated in the proceedings before the governmental entity's chief administrative officer, if the appeal is of the chief administrative officer's decision affirming an access denial.
- (b)
 - (i) The director may decline to schedule a hearing if the record series that is the subject of the appeal has been found by the director in a previous hearing involving the same governmental entity to be appropriately classified as private, controlled, or protected.
 - (ii) If the director declines to schedule a hearing, the director shall send a notice to the records appellant indicating that the request for hearing has been denied and the reason for the denial.
- (c) The director may schedule a hearing on an appeal to the director on a regularly-scheduled hearing date that is later than the period described in Subsection (4)(a)(i) if that hearing date is the first regularly-scheduled hearing date at which there are fewer than 10 appeals scheduled to be heard.
- (5)
 - (a) No later than five business days before the day of the hearing, a governmental entity shall submit to the director a written statement of facts, reasons, and legal authority in support of the governmental entity's position.
 - (b) The governmental entity shall send a copy of the written statement by first class mail, postage prepaid, to the requester or interested party involved in the appeal.
- (6)
 - (a) No later than 10 business days after the day on which the director sends the notice of appeal, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention with the director.
 - (b) Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention.
 - (c) The person seeking intervention shall provide copies of the statement described in Subsection (6)(b) to all parties to the proceedings before the director.
- (7)
 - (a) The director shall hold a hearing within the period of time described in Subsection (4).
 - (b) In accordance with Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules requiring that a hearing under this section is open to the public in substantially the same manner as a meeting under Title 52, Chapter 4, Open and Public Meetings Act.
- (8) At the hearing, the director:
 - (a) shall allow the parties to testify, present evidence, and comment on the issues; and
 - (b) may allow other interested persons to comment on the issues.
- (9)
 - (a)
 - (i) The director:
 - (A) may review the disputed records; and
 - (B) shall review the disputed records, if the director is weighing the various interests under Subsection (11).
 - (ii) A review of the disputed records under Subsection (9)(a)(i) shall be in camera.
 - (b) The director may not disclose any information or record reviewed by the director in camera unless the disclosure is otherwise authorized by this chapter.
- (10)
 - (a) Discovery is prohibited, but the director may issue subpoenas or other orders to compel production of necessary evidence.

(b) When the subject of a subpoena issued by the director disobeys or fails to comply with the subpoena, the director may file a motion for an order to compel obedience to the subpoena with the district court.

(c)

(i) The director's review shall be de novo, if the appeal is an appeal from a decision of a chief administrative officer:

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

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

(ii) For an appeal from a decision of a local appeals board, the director shall review and consider the decision of the local appeals board.

(11)

(a) No later than seven business days after the day of the hearing, the director shall issue a signed order:

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

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

(b) Except as provided in Section 63G-2-406, the director 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, controlled, or protected if the public interest favoring access is greater than or equal to the interest favoring restriction of access.

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

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

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

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

(12) The order of the director shall include:

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

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

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

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

(13)

(a) If the director fails to issue a decision within 73 calendar days after the day of the filing of the notice of appeal, that failure is the equivalent of an order denying the appeal.

(b) A records appellant shall notify the director in writing if the records appellant considers the appeal denied.

(14) A party to a proceeding before the director may seek judicial review in district court of a director's order by filing a petition for review of the order as provided in Section 63G-2-404.

(15)

- (a) Unless a notice of intent to appeal is filed under Subsection (15)(b), each party to the proceeding shall comply with the order of the director.
- (b) If a party disagrees with the order of the director, that party may file a notice of intent to appeal the order.
- (c) If the director orders the governmental entity to produce a record and no appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a record, the governmental entity shall:
 - (i) produce the record; and
 - (ii) file a notice of compliance with the director.
- (d)
 - (i) If the governmental entity that is ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the director may do either or both of the following:
 - (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or
 - (B) send written notice of the governmental entity's noncompliance to the governor.
 - (ii) In imposing a civil penalty, the director shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional.

Amended by Chapter 476, 2025 General Session