

28 record;

29 ▶ modifies language relating to appeals from records committee decisions to clarify
30 that appeals are permitted by any party; and

31 ▶ makes technical changes.

32 **Monies Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **63-2-103**, as last amended by Chapter 78, Laws of Utah 2002

39 **63-2-201**, as last amended by Chapter 191, Laws of Utah 2002

40 **63-2-203**, as last amended by Chapter 48, Laws of Utah 1999

41 **63-2-204**, as last amended by Chapter 280, Laws of Utah 1992

42 **63-2-403**, as last amended by Chapter 245, Laws of Utah 1999

43 **63-2-501**, as last amended by Chapter 153, Laws of Utah 2003

44 **63-2-903**, as last amended by Chapters 97 and 185, Laws of Utah 2002



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

47 Section 1. Section **63-2-103** is amended to read:

48 **63-2-103. Definitions.**

49 As used in this chapter:

50 (1) "Audit" means:

51 (a) a systematic examination of financial, management, program, and related records
52 for the purpose of determining the fair presentation of financial statements, adequacy of
53 internal controls, or compliance with laws and regulations; or

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

57 (2) "Chronological logs" mean the regular and customary summary records of law
58 enforcement agencies and other public safety agencies that show the time and general nature of

59 police, fire, and paramedic calls made to the agency and any arrests or jail bookings made by
60 the agency.

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

64 (4) (a) "Computer program" means a series of instructions or statements that permit the
65 functioning of a computer system in a manner designed to provide storage, retrieval, and
66 manipulation of data from the computer system, and any associated documentation and source
67 material that explain how to operate the computer program.

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

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

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

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

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

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

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

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

80 (6) "Controlled record" means a record containing data on individuals that is controlled
81 as provided by Section 63-2-303.

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

87 (8) "Explosive" means a chemical compound, device, or mixture:

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

89 (b) that contains oxidizing or combustive units or other ingredients in proportions,

90 quantities, or packing so that:

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

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

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

95 (B) causing death or serious bodily injury.

96 (9) "Government audit agency" means any governmental entity that conducts [~~audits~~]
97 an audit.

98 (10) (a) "Governmental entity" means:

99 (i) executive department agencies of the state, the offices of the governor, lieutenant
100 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
101 the Board of Examiners, the National Guard, the Career Service Review Board, the State Board
102 of Education, the State Board of Regents, and the State Archives;

103 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
104 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
105 committees, except any political party, group, caucus, or rules or sifting committee of the
106 Legislature;

107 (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar
108 administrative units in the judicial branch;

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

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

114 (b) "Governmental entity" also means every office, agency, board, bureau, committee,
115 department, advisory board, or commission of [~~the entities~~] an entity listed in Subsection
116 (10)(a) that is funded or established by the government to carry out the public's business.

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

121 (12) "Individual" means a human being.

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

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

127 (ii) names of victims;

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

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

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

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

135 (b) Initial contact reports do not include follow-up or investigative reports prepared
136 after the initial contact report. However, if the information specified in Subsection (13)(a)
137 appears in follow-up or investigative reports, it may only be treated confidentially if it is
138 private, controlled, protected, or exempt from disclosure under Subsection 63-2-201(3)(b).

139 (14) "Notice of compliance" means a statement confirming that a government entity
140 has complied with a records committee order.

141 [~~(14)~~] (15) "Person" means any individual, nonprofit or profit corporation, partnership,
142 sole proprietorship, or other type of business organization.

143 [~~(15)~~] (16) "Private provider" means any person who contracts with a governmental
144 entity to provide services directly to the public.

145 [~~(16)~~] (17) "Private record" means a record containing data on individuals that is
146 private as provided by Section 63-2-302.

147 [~~(17)~~] (18) "Protected record" means a record that is classified protected as provided by
148 Section 63-2-304.

149 [~~(18)~~] (19) "Public record" means a record that is not private, controlled, or protected
150 and that is not exempt from disclosure as provided in Subsection 63-2-201(3)(b).

151 [~~(19)~~] (20) (a) "Record" means [~~all books, letters, documents, papers, maps, plans,~~

152 ~~photographs, films, cards, tapes, recordings;~~ a book, letter, document, paper, map, plan,
153 photograph, film, card, tape, recording, electronic data, or other documentary [~~materials~~]
154 material regardless of physical form or characteristics:

155 (i) [~~which are~~] that is prepared, owned, received, or retained by a governmental entity
156 or political subdivision; and

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

159 (b) "Record" does not mean:

160 (i) a temporary [~~drafts~~] draft or similar [~~materials~~] material prepared for the originator's
161 personal use or prepared by the originator for the personal use of an individual for whom [~~he~~]
162 the originator is working;

163 (ii) [~~materials~~] material that are legally owned by an individual in [~~his~~] the individual's
164 private capacity;

165 (iii) [~~materials~~] material to which access is limited by the laws of copyright or patent
166 unless the copyright or patent is owned by a governmental entity or political subdivision;

167 (iv) proprietary software;

168 (v) junk mail or a commercial [~~publications~~] publication received by a governmental
169 entity or an official or employee of a governmental entity;

170 (vi) [~~books and other materials that are~~] a book that is cataloged, indexed, or
171 inventoried and contained in the collections of [~~libraries~~] a library open to the public;

172 (vii) material that is cataloged, indexed, or inventoried and contained in the collections
173 of a library open to the public, regardless of physical form or characteristics of the material;

174 [~~(vii)~~] (viii) a daily [~~calendars and~~] calendar or other personal [~~notes~~] note prepared by
175 the originator for the originator's personal use or for the personal use of an individual for whom
176 [~~he~~] the originator is working;

177 [~~(viii)~~] (ix) a computer [~~programs as defined in Subsection (4) that are~~] program that is
178 developed or purchased by or for any governmental entity for its own use; or

179 [~~(ix) notes~~] (x) a note or internal [~~memoranda~~] memorandum prepared as part of the
180 deliberative process by:

181 (A) a member of the judiciary[;];

182 (B) an administrative law judge[;];

183 (C) a member of the Board of Pardons and Parole~~[-];~~ or

184 (D) a member of any other body charged by law with performing a quasi-judicial
185 function.

186 ~~[(20)]~~ (21) "Record series" means a group of records that may be treated as a unit for
187 purposes of designation, description, management, or disposition.

188 ~~[(21)]~~ (22) "Records committee" means the State Records Committee created in
189 Section 63-2-501.

190 ~~[(22)]~~ (23) "Records officer" means the individual appointed by the chief
191 administrative officer of each governmental entity, or the political subdivision to work with
192 state archives in the care, maintenance, scheduling, designation, classification, disposal, and
193 preservation of records.

194 ~~[(23)]~~ (24) "Schedule," "scheduling," and their derivative forms mean the process of
195 specifying the length of time each record series should be retained by a governmental entity for
196 administrative, legal, fiscal, or historical purposes and when each record series should be
197 transferred to the state archives or destroyed.

198 ~~[(24)]~~ (25) "State archives" means the Division of Archives and Records Service
199 created in Section 63-2-901.

200 ~~[(25)]~~ (26) "State archivist" means the director of the state archives.

201 ~~[(26)]~~ (27) "Summary data" means statistical records and compilations that contain
202 data derived from private, controlled, or protected information but that do not disclose private,
203 controlled, or protected information.

204 Section 2. Section **63-2-201** is amended to read:

205 **63-2-201. Right to inspect records and receive copies of records.**

206 (1) Every person has the right to inspect a public record free of charge, and the right to
207 take a copy of a public record during normal working hours, subject to Sections 63-2-203 and
208 63-2-204.

209 (2) ~~[All records are]~~ A record is public unless otherwise expressly provided by statute.

210 (3) The following records are not public:

211 (a) ~~[records that are]~~ a record that is private, controlled, or protected under Sections
212 63-2-302, 63-2-302.5, 63-2-303, and 63-2-304; and

213 (b) ~~[records]~~ a record to which access is restricted pursuant to court rule, another state

214 statute, federal statute, or federal regulation, including records for which access is governed or
215 restricted as a condition of participation in a state or federal program or for receiving state or
216 federal funds.

217 (4) Only ~~[those records]~~ a record specified in Section 63-2-302, 63-2-302.5, 63-2-303,
218 or 63-2-304 may be classified private, controlled, or protected.

219 (5) (a) A governmental entity may not disclose a record that is private, controlled, or
220 protected to any person except as provided in Subsection (5)(b), Section 63-2-202, 63-2-206, or
221 63-2-302.5.

222 (b) A governmental entity may disclose ~~[records]~~ a record that ~~[are]~~ is private under
223 Subsection 63-2-302(2) or protected under Section 63-2-304 to persons other than those
224 specified in Section 63-2-202 or 63-2-206 if the head of a governmental entity, or a designee,
225 determines that:

226 (i) there is no interest in restricting access to the record~~[-, or that];~~ or

227 (ii) the interests favoring access outweighs the interest favoring restriction of access.

228 (6) (a) The disclosure of ~~[records]~~ a record to which access is governed or limited
229 pursuant to court rule, another state statute, federal statute, or federal regulation, including
230 ~~[records]~~ a record for which access is governed or limited as a condition of participation in a
231 state or federal program or for receiving state or federal funds, is governed by the specific
232 provisions of that statute, rule, or regulation.

233 (b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter
234 is not inconsistent with the statute, rule, or regulation.

235 (7) A governmental entity shall provide a person with a certified copy of a record if:

236 (a) the person requesting the record has a right to inspect it;

237 (b) the person identifies the record with reasonable specificity; and

238 (c) the person pays the lawful fees.

239 (8) (a) A governmental entity is not required to create a record in response to a request.

240 (b) Upon request, a governmental entity shall provide a record in a particular format if:

241 (i) the governmental entity is able to do so without unreasonably interfering with the
242 governmental entity's duties and responsibilities; and

243 (ii) the requester agrees to pay the governmental entity for its costs incurred in
244 providing the record in the requested format in accordance with Section 63-2-203.

245 (c) Nothing in this section requires a governmental entity to fulfill a person's records
 246 request if the request unreasonably duplicates prior records requests from that person.

247 (9) (a) The governmental entity may allow a person requesting records to copy the
 248 records if:

249 ~~[(9) If a]~~ (i) the person requests copies of more than 50 pages of records from a
 250 governmental entity~~[-and, if];~~

251 (ii) the records are contained in files that do not contain records that are exempt from
 252 disclosure, or the records may be segregated to remove private, protected, or controlled
 253 information from disclosure; and

254 (iii) the governmental entity supervises the copying process to protect the public from
 255 the potential for loss of a public record.

256 (b) When the requirements of Subsection (9)(a) are met, the governmental entity may:

257 ~~[(a)]~~ (i) provide the requester with the facilities for copying the requested records and
 258 require that the requester make the copies ~~himself~~; or

259 ~~[(b)]~~ (ii) allow the requester to provide ~~his~~ the requester's own copying facilities and
 260 personnel to make the copies at the governmental entity's offices and waive the fees for
 261 copying the records.

262 (10) (a) A governmental entity that owns an intellectual property right and that offers
 263 the intellectual property right for sale or license may control by ordinance or policy the
 264 duplication and distribution of the material based on terms the governmental entity considers to
 265 be in the public interest.

266 (b) Nothing in this chapter shall be construed to limit or impair the rights or protections
 267 granted to the governmental entity under federal copyright or patent law as a result of its
 268 ownership of the intellectual property right.

269 (11) A governmental entity may not use the physical form, electronic or otherwise, in
 270 which a record is stored to deny, or unreasonably hinder the rights of ~~persons~~ a person to
 271 inspect and receive ~~copies~~ a copy of a record under this chapter.

272 (12) A governmental entity may provide access to an electronic copy of a record in lieu
 273 of providing access to its paper equivalent.

274 Section 3. Section **63-2-203** is amended to read:

275 **63-2-203. Fees.**

276 (1) A governmental entity may charge a reasonable fee to cover the governmental
277 entity's actual cost of duplicating a record. This fee shall be approved by the governmental
278 entity's executive officer.

279 (2) (a) When a governmental entity compiles a record in a form other than that
280 normally maintained by the governmental entity, the actual costs under this section may include
281 the following:

282 ~~[(a)]~~ (i) the cost of staff time for summarizing, compiling, or tailoring the record either
283 into an organization or media to meet the person's request;

284 ~~[(b)]~~ (ii) the cost of staff time for search, retrieval, and other direct administrative costs
285 for complying with a request~~[- The hourly charge may not exceed the salary of the lowest paid~~
286 ~~employee who, in the discretion of the custodian of records, has the necessary skill and training~~
287 ~~to perform the request; provided, however, that no charge may be made for the first quarter~~
288 ~~hour of staff time]; and~~

289 ~~[(c)]~~ (iii) in the case of fees for a record that is the result of computer output other than
290 word processing, the actual incremental cost of providing the electronic services and products
291 together with a reasonable portion of the costs associated with formatting or interfacing the
292 information for particular users, and the administrative costs as set forth in Subsections
293 (2)(a)(i) and ~~[(b)]~~ (ii).

294 (b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest
295 paid employee who, in the discretion of the custodian of records, has the necessary skill and
296 training to perform the request.

297 (c) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first
298 quarter hour of staff time.

299 (3) (a) Fees shall be established as ~~[follows:]~~ provided in this Subsection (3).

300 ~~[(a) Governmental entities]~~

301 (b) A governmental entity with fees established by the Legislature;

302 (i) shall establish the fees defined in Subsection (2), or other actual costs associated
303 with this section through the budget process~~[- Governmental entities with fees established by~~
304 ~~the Legislature]; and~~

305 (ii) may use the procedures of Section 63-38-3.2 to set fees until the Legislature
306 establishes fees through the budget process. ~~[A fee set by a governmental entity in accordance~~

307 with Section 63-38-3.2 expires on May 1, 1995.]

308 ~~[(b)]~~ (c) Political subdivisions shall establish fees by ordinance or written formal policy
309 adopted by the governing body.

310 ~~[(c)]~~ (d) The judiciary shall establish fees by rules of the judicial council.

311 (4) A governmental entity may fulfill a record request without charge and is
312 encouraged to do so when it determines that:

313 (a) releasing the record primarily benefits the public rather than a person;

314 (b) the individual requesting the record is the subject of the record, or an individual
315 specified in Subsection 63-2-202(1) or (2); or

316 (c) the requester's legal rights are directly implicated by the information in the record,
317 and the requester is impecunious.

318 (5) A governmental entity may not charge a fee for:

319 (a) reviewing a record to determine whether it is subject to disclosure, except as
320 permitted by Subsection (2)~~[(b)]~~(a)(ii); or

321 (b) inspecting a record.

322 (6) (a) A person who believes that there has been an unreasonable denial of a fee
323 waiver under Subsection (4) may appeal the denial in the same manner as a person appeals
324 when inspection of a public record is denied under Section 63-2-205.

325 (b) The adjudicative body hearing the appeal has the same authority when a fee waiver
326 or reduction is denied as it has when the inspection of a public record is denied.

327 (7) (a) All fees received under this section by a governmental entity subject to
328 Subsection (3)~~[(a)]~~(b) shall be retained by the governmental entity as a dedicated credit.

329 (b) Those funds shall be used to recover the actual cost and expenses incurred by the
330 governmental entity in providing the requested record or record series.

331 (8) (a) A governmental entity may require payment of past fees and future estimated
332 fees before beginning to process a request if:

333 (i) fees are expected to exceed \$50~~[-]~~; or ~~[(if)]~~

334 (ii) the requester has not paid fees from previous requests.

335 (b) Any prepaid amount in excess of fees due shall be returned to the requester.

336 (9) This section does not alter, repeal, or reduce fees established by other statutes or
337 legislative acts.

338 (10) (a) Notwithstanding Subsection (3)~~(b)~~(c), fees for voter registration records shall
339 be set as provided in this Subsection (10).

340 (b) The lieutenant governor shall:

341 (i) after consultation with county clerks, establish uniform fees for voter registration
342 and voter history records that meet the requirements of this section; and

343 (ii) obtain legislative approval of those fees by following the procedures and
344 requirements of Section 63-38-3.2.

345 (11) If a person requesting a record does not establish a right to an expedited response
346 under Subsection 63-2-204(3)(a), a governmental entity may charge that person:

347 (a) for the actual cost of any government supervision provided under Subsection
348 63-2-201(9); and

349 (b) for the actual cost of segregating exempt information under Subsection
350 63-2-201(9).

351 Section 4. Section **63-2-204** is amended to read:

352 **63-2-204. Requests -- Time limit for response and extraordinary circumstances.**

353 (1) A person making a request for a record shall furnish the governmental entity with a
354 written request containing [his]:

355 (a) the person's name, mailing address, and daytime telephone number, if available[-];
356 and

357 (b) a description of the [records] record requested that identifies the record with
358 reasonable specificity.

359 (2) A governmental entity may make rules in accordance with Title 63, Chapter 46a,
360 Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall
361 be directed.

362 (3) (a) As soon as reasonably possible, but no later than ten business days after
363 receiving a written request, or five business days after receiving a written request if the
364 requester demonstrates that expedited response to the record request benefits the public rather
365 than the person, the governmental entity shall respond to the request by:

366 (i) approving the request and providing the record;

367 (ii) denying the request;

368 (iii) notifying the requester that it does not maintain the record and providing, if

369 known, the name and address of the governmental entity that does maintain the record; or
370 (iv) notifying the requester that because of one of the extraordinary circumstances
371 listed in Subsection (4), it cannot immediately approve or deny the request.

372 (b) The notice described in Subsection (3)(a)(iv) shall:

373 (i) describe the circumstances relied upon; and

374 (ii) specify the date when the records will be available.

375 ~~(b)~~ (c) Any person who requests a record to obtain information for a story or report
376 for publication or broadcast to the general public is presumed to be acting to benefit the public
377 rather than a person.

378 (4) The following circumstances constitute "extraordinary circumstances" that allow a
379 governmental entity to delay approval or denial by an additional period of time as specified in
380 Subsection ~~[63-2-204]~~(5) if the governmental entity determines that due to the extraordinary
381 circumstances it cannot respond within the time limits provided in Subsection (3):

382 (a) another governmental entity is using the record, in which case the originating
383 governmental entity shall promptly request that the governmental entity currently in possession
384 return the record;

385 (b) another governmental entity is using the record as part of an audit, and returning the
386 record before the completion of the audit would impair the conduct of the audit;

387 (c) (i) the request is for a ~~[voluminous quantity of records;]~~ record series containing a
388 substantial number of records;

389 (ii) the requester seeks a substantial number of records or records series; or

390 (iii) the requester seeks a substantial number of records or records series in requests
391 filed within ten working days of each other;

392 (d) the governmental entity is currently processing a large number of records requests;

393 (e) the request requires the governmental entity to review a large number of records to
394 locate the records requested;

395 (f) the decision to release a record involves legal issues that require the governmental
396 entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case
397 law;

398 (g) segregating information that the requester is entitled to inspect from information
399 that the requester is not entitled to inspect requires extensive editing; or

400 (h) segregating information that the requester is entitled to inspect from information
401 that the requester is not entitled to inspect requires computer programming.

402 (5) If one of the extraordinary circumstances listed in Subsection (4) precludes
403 approval or denial within the time specified in Subsection (3), the following time limits apply
404 to the extraordinary circumstances:

405 (a) for claims under Subsection (4)(a), the governmental entity currently in possession
406 of the record shall return the record to the originating entity within five business days of the
407 request for the return unless returning the record would impair the holder's work;

408 (b) for claims under Subsection (4)(b), the originating governmental entity shall notify
409 the requester when the record is available for inspection and copying;

410 (c) for claims under Subsections (4)(c), (d), and (e), the governmental entity shall:

411 (i) disclose the records that it has located which the requester is entitled to inspect;

412 (ii) provide the requester with an estimate of the amount of time it will take to finish
413 the work required to respond to the request; [~~and~~]

414 (iii) complete the work and disclose those records that the requester is entitled to
415 inspect as soon as reasonably possible; and

416 (iv) for any person that does not establish a right to an expedited response as
417 authorized by Subsection (3)(a), a governmental entity may choose to:

418 (A) require the person to provide for copying of the records as provided in Subsection
419 63-2-201(9); or

420 (B) treat a request for multiple records as separate record requests, and respond
421 sequentially to each request;

422 (d) for claims under Subsection (4)(f), the governmental entity shall either approve or
423 deny the request within five business days after the response time specified for the original
424 request has expired;

425 (e) for claims under Subsection (4)(g), the governmental entity shall fulfill the request
426 within 15 business days from the date of the original request; or

427 (f) for claims under Subsection (4)(h), the governmental entity shall complete its
428 programming and disclose the requested records as soon as reasonably possible.

429 (6) (a) If a request for access is submitted to an office of a governmental entity other
430 than that specified by rule in accordance with Subsection (2), the office shall promptly forward

431 the request to the appropriate office.

432 (b) If the request is forwarded promptly, the time limit for response begins when the
433 record is received by the office specified by rule.

434 (7) If the governmental entity fails to provide the requested records or issue a denial
435 within the specified time period, that failure is considered the equivalent of a determination
436 denying access to the [records] record.

437 Section 5. Section **63-2-403** is amended to read:

438 **63-2-403. Appeals to the records committee.**

439 (1) A petitioner, including an aggrieved person who did not participate in the appeal to
440 the governmental entity's chief administrative officer, may appeal to the records committee by
441 filing a notice of appeal with the executive secretary no later than:

442 (a) 30 days after the chief administrative officer of the governmental entity has granted
443 or denied the [records] record request in whole or in part, including a denial under Subsection
444 63-2-204(7);

445 (b) 45 days after the original request for [records] a record if:

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

447 (ii) the chief administrative officer failed to make a determination under Section
448 63-2-401.

449 (2) The notice of appeal shall contain the following information:

450 (a) the petitioner's name, mailing address, and daytime telephone number;

451 (b) a copy of any denial of the [records] record request; and

452 (c) the relief sought.

453 (3) The petitioner may file a short statement of facts, reasons, and legal authority in
454 support of the appeal.

455 (4) (a) Except as provided in Subsection (4)(b), no later than three business days after
456 receiving a notice of appeal, the executive secretary of the records committee shall:

457 (i) schedule a hearing for the records committee to discuss the appeal at the next
458 regularly scheduled committee meeting falling at least 14 days after the date the notice of
459 appeal is filed but no longer than 45 days after the date the notice of appeal was filed provided,
460 however, the records committee may schedule an expedited hearing upon application of the
461 petitioner and good cause shown;

462 (ii) send a copy of the notice of hearing to the petitioner; and
463 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing
464 to:

465 (A) each member of the records committee;
466 (B) the records officer and the chief administrative officer of the governmental entity
467 from which the appeal originated;
468 (C) any person who made a business confidentiality claim under Section 63-2-308 for a
469 record that is the subject of the appeal; and
470 (D) all persons who participated in the proceedings before the governmental entity's
471 chief administrative officer.

472 (b) (i) The executive secretary of the records committee may decline to schedule a
473 hearing if the record series that is the subject of the appeal has been found by the committee in
474 a previous hearing involving the same government entity to be appropriately classified as
475 private, controlled, or protected.

476 (ii) (A) If the executive secretary of the records committee declines to schedule a
477 hearing, the executive secretary of the records committee shall send a notice to the petitioner
478 indicating that the request for hearing has been denied and the reason for the denial.

479 (B) The committee shall make rules to implement this section as provided by Title 63,
480 Chapter 46a, Utah Administrative Rulemaking Act.

481 (5) (a) A written statement of facts, reasons, and legal authority in support of the
482 governmental entity's position must be submitted to the executive secretary of the records
483 committee not later than five business days before the hearing.

484 (b) The governmental entity shall send a copy of the written statement to the petitioner
485 by first class mail, postage prepaid. The executive secretary shall forward a copy of the written
486 statement to each member of the records committee.

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

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

492 (c) The person seeking intervention shall provide copies of the statement to all parties

493 to the proceedings before the records committee.

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

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

499 (9) (a) The records committee may review the disputed [~~records~~] record. However, if
500 the committee is weighing the various interests under Subsection (11), the committee must
501 review the disputed [~~records~~] record. The review shall be in camera.

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

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

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

510 (c) The records committee's review shall be de novo.

511 (11) (a) No later than three business days after the hearing, the records committee shall
512 issue a signed order either granting the petition in whole or in part or upholding the
513 determination of the governmental entity in whole or in part.

514 (b) The records committee may, upon consideration and weighing of the various
515 interests and public policies pertinent to the classification and disclosure or nondisclosure,
516 order the disclosure of information properly classified as private, controlled, or protected if the
517 public interest favoring access outweighs the interest favoring restriction of access.

518 (c) In making a determination under Subsection (11)(b), the records committee shall
519 consider and, where appropriate, limit the requester's use and further disclosure of the record in
520 order to protect privacy interests in the case of a private or controlled [~~records~~] record, business
521 confidentiality interests in the case of [~~records~~] a record protected under Subsections
522 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected
523 records.

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

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

529 (b) a description of the record or portions of the record to which access was ordered or
530 denied, provided that the description does not disclose private, controlled, or protected
531 information or information exempt from disclosure under Subsection 63-2-201(3)(b);

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

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

537 (13) If the records committee fails to issue a decision within 35 days of the filing of the
538 notice of appeal, that failure shall be considered the equivalent of an order denying the appeal.
539 The petitioner shall notify the records committee in writing if ~~he~~ the petitioner considers the
540 appeal denied.

541 (14) (a) ~~[Each government entity]~~ Unless a notice of intent to appeal is filed under
542 Subsection (14)(b), each party to the proceeding shall comply with the order of the records
543 committee [and, if records are ordered to be produced, file: (i)].

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

546 (c) If the records committee orders the government entity to produce a record and no
547 appeal is filed, or if, as a result of the appeal, the government entity is required to produce a
548 record, the government entity shall:

549 (i) produce the record; and

550 (ii) file a notice of compliance with the records committee [upon production of the
551 records; or].

552 ~~[(ii) a notice of intent to appeal.]~~

553 ~~[(b)]~~ (d) (i) If the government entity that is ordered to produce a record fails to file a
554 notice of compliance or a notice of intent to appeal, the records committee may do either or

555 both of the following:

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

557 (B) send written notice of the government entity's noncompliance to:

558 (I) the governor for executive branch entities~~[-, to]~~;

559 (II) the Legislative Management Committee for legislative branch entities~~[-]~~; and ~~[to]~~

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

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

564 Section 6. Section **63-2-501** is amended to read:

565 **63-2-501. State Records Committee created -- Membership -- Terms -- Vacancies**
566 **-- Expenses.**

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

569 (a) an individual in the private sector whose profession requires ~~[him]~~ the individual to
570 create or manage records that if created by a governmental entity would be private or
571 controlled;

572 (b) the state auditor or the auditor's designee;

573 (c) the director of the Division of State History or the director's designee;

574 (d) the governor or the governor's designee;

575 (e) one citizen member;

576 (f) one ~~[elected official representing]~~ individual nominated by the Utah League of
577 Cities and Towns to represent political subdivisions~~[-, and]~~ with a population in excess of
578 25,000;

579 (g) one individual nominated by the Utah League of Cities and Towns to represent
580 political subdivisions with a population of 25,000 or less; and

581 ~~[(g)]~~ (h) one individual representing the news media.

582 (2) The governor shall appoint the members specified in Subsections (1)(a), (e), (f),
583 ~~[and (g) shall be appointed by the governor]~~ (g) and (h) with the consent of the Senate.

584 (3) (a) Except as required by Subsection (3)(b), as terms of current committee members
585 expire, the governor shall appoint each new member or reappointed member under Subsections

586 (1)(a), (e), (f), (g), and (h) to a four-year term.

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

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

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

594 (5) (a) (i) Members who are not government employees shall receive no compensation
595 or benefits for their services, but may receive per diem and expenses incurred in the
596 performance of the member's official duties at the rates established by the Division of Finance
597 under Sections 63A-3-106 and 63A-3-107.

598 (ii) Members may decline to receive per diem and expenses for their service.

599 (b) (i) State government officer and employee members who do not receive salary, per
600 diem, or expenses from their agency for their service may receive per diem and expenses
601 incurred in the performance of their official duties from the committee at the rates established
602 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

603 (ii) State government officer and employee members may decline to receive per diem
604 and expenses for their service.

605 (c) (i) Local government members who do not receive salary, per diem, or expenses
606 from the entity that they represent for their service may receive per diem and expenses incurred
607 in the performance of their official duties at the rates established by the Division of Finance
608 under Sections 63A-3-106 and 63A-3-107.

609 (ii) Local government members may decline to receive per diem and expenses for their
610 service.

611 Section 7. Section **63-2-903** is amended to read:

612 **63-2-903. Duties of governmental entities.**

613 The chief administrative officer of each governmental entity shall:

614 (1) establish and maintain an active, continuing program for the economical and
615 efficient management of the governmental entity's records as provided by this chapter;

616 (2) appoint one or more records officers who will be trained to work with the state

617 archives in the care, maintenance, scheduling, disposal, classification, designation, access, and
618 preservation of records;

619 (3) make and maintain adequate and proper documentation of the organization,
620 functions, policies, decisions, procedures, and essential transactions of the governmental entity
621 designed to furnish information to protect the legal and financial rights of persons directly
622 affected by the entity's activities;

623 (4) submit to the state archivist proposed schedules of records for final approval by the
624 records committee;

625 (5) cooperate with the state archivist in conducting surveys made by the state archivist;

626 (6) comply with rules issued by the Department of Administrative Services as provided
627 by Section 63-2-904;

628 (7) report to the state archives the designation of record series that it maintains;

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

630 and

631 (9) establish and report to the state archives retention schedules for objects that the
632 governmental entity determines are not [records] defined as a public record under [Subsection]
633 Section 63-2-103[~~(18)~~], but that have historical or evidentiary value.

Legislative Review Note

as of 1-12-05 1:52 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0044

Gouvernement Records Amendments

20-Jan-05

3:38 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst