

GRAMA RECORDS COMMITTEE APPEAL

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: Brent H. Goodfellow

LONG TITLE

General Description:

This bill modifies the Government Records Access and Management Act relating to scheduling of hearings before the state records committee.

Highlighted Provisions:

This bill:

- ▶ extends the time for the records committee to schedule and provide notice of a hearing;
- ▶ expands the time period during which hearings can be scheduled before the records committee; and
- ▶ extends the time for the records committee to issue a signed order from a hearing.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63-2-403, as last amended by Chapters 40 and 201, Laws of Utah 2005

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

Section 1. Section **63-2-403** is amended to read:



28 **63-2-403. Appeals to the records committee.**

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

32 (a) 30 days after the chief administrative officer of the governmental entity has granted
33 or denied the record request in whole or in part, including a denial under Subsection
34 63-2-204(7);

35 (b) 45 days after the original request for a record if:

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

37 (ii) the chief administrative officer failed to make a determination under Section
38 63-2-401.

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

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

41 (b) a copy of any denial of the record request; and

42 (c) the relief sought.

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

45 (4) (a) Except as provided in Subsection (4)(b), no later than [~~three~~] five business days
46 after receiving a notice of appeal, the executive secretary of the records committee shall:

47 (i) schedule a hearing for the records committee to discuss the appeal at the next
48 regularly scheduled committee meeting falling at least 14 days after the date the notice of
49 appeal is filed but no longer than [~~45~~] 52 calendar days after the date the notice of appeal was
50 filed except that the records committee may schedule an expedited hearing upon application of
51 the petitioner and good cause shown;

52 (ii) send a copy of the notice of hearing to the petitioner; and

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

55 (A) each member of the records committee;

56 (B) the records officer and the chief administrative officer of the governmental entity
57 from which the appeal originated;

58 (C) any person who made a business confidentiality claim under Section 63-2-308 for a

59 record that is the subject of the appeal; and

60 (D) all persons who participated in the proceedings before the governmental entity's
61 chief administrative officer.

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

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

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

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

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

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

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

82 (c) The person seeking intervention shall provide copies of the statement described in
83 Subsection (6)(b) to all parties to the proceedings before the records committee.

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

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

89 (9) (a) The records committee may review the disputed records. However, if the

90 committee is weighing the various interests under Subsection (11), the committee must review
91 the disputed records. The review shall be in camera.

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

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

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

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

101 (11) (a) No later than [~~three~~] five business days after the hearing, the records
102 committee shall issue a signed order either granting the petition in whole or in part or
103 upholding the determination of the governmental entity in whole or in part.

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

108 (c) In making a determination under Subsection (11)(b), the records committee shall
109 consider and, where appropriate, limit the requester's use and further disclosure of the record in
110 order to protect:

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

112 (ii) business confidentiality interests in the case of a record protected under Subsection
113 63-2-304(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

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

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

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

121 denied, provided that the description does not disclose private, controlled, or protected
122 information or information exempt from disclosure under Subsection 63-2-201(3)(b);

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

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

128 (13) If the records committee fails to issue a decision within [~~35~~] 57 calendar days of
129 the filing of the notice of appeal, that failure shall be considered the equivalent of an order
130 denying the appeal. The petitioner shall notify the records committee in writing if the
131 petitioner considers the appeal denied.

132 (14) (a) Unless a notice of intent to appeal is filed under Subsection (14)(b), each party
133 to the proceeding shall comply with the order of the records committee.

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

136 (c) If the records committee orders the governmental entity to produce a record and no
137 appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a
138 record, the governmental entity shall:

139 (i) produce the record; and

140 (ii) file a notice of compliance with the records committee.

141 (d) (i) If the governmental entity that is ordered to produce a record fails to file a notice
142 of compliance or a notice of intent to appeal, the records committee may do either or both of
143 the following:

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

145 (B) send written notice of the governmental entity's noncompliance to:

146 (I) the governor for executive branch entities;

147 (II) the Legislative Management Committee for legislative branch entities; and

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

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

Legislative Review Note
as of 12-21-05 2:22 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