

1 **GRAMA APPEALS PROCESS AND DOCUMENT**

2 **REQUEST AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: David L. Thomas**

6 House Sponsor: Douglas C. Aagard

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Government Records Access and Management Act to address the
11 appeals process and document requests.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ designates a request for a record that relates to a notice of claim under the
- 15 Governmental Immunity Act of Utah as an extraordinary circumstance;
- 16 ▶ requires that appeals be heard by the state records committee before being appealed
- 17 to the judiciary;
- 18 ▶ clarifies language relating to time requirements for the filing of appeals and requests
- 19 for judicial review;
- 20 ▶ removes the procedure for filing a notice of intent to appeal prior to seeking judicial
- 21 appeal of a records committee order;
- 22 ▶ modifies language related to attorney's fees to accommodate the requirement for
- 23 records committee review; and
- 24 ▶ makes technical changes.

25 **Monies Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **53B-16-303**, as enacted by Chapter 280, Laws of Utah 1992

32 **63-2-201**, as last amended by Chapter 40, Laws of Utah 2005

33 **63-2-202**, as last amended by Chapter 201, Laws of Utah 2005

34 **63-2-204**, as last amended by Chapters 40 and 71, Laws of Utah 2005

35 **63-2-401**, as last amended by Chapter 280, Laws of Utah 1992

36 **63-2-403**, as last amended by Chapters 40 and 201, Laws of Utah 2005

37 **63-2-404**, as last amended by Chapter 133, Laws of Utah 1995

38 **63-2-701**, as last amended by Chapter 99, Laws of Utah 1994

39 **63-2-802**, as last amended by Chapter 102, Laws of Utah 2005

40 REPEALS:

41 **63-2-402**, as last amended by Chapter 280, Laws of Utah 1992



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

44 Section 1. Section **53B-16-303** is amended to read:

45 **53B-16-303. Access to restricted records.**

46 (1) Notwithstanding any other provision of Title 63, Chapter 2, Government Records
47 Access and Management Act, access to records restricted by this part shall only be permitted
48 upon:

49 ~~[(1)]~~ (a) written consent of the public institution of higher education originating,
50 receiving, or maintaining such records; or

51 ~~[(2)]~~ (b) a finding by the State Records Committee or a court that the record has not
52 been properly classified as restricted under Section 63-2-302, ~~[provided]~~ except that the review
53 of a restricted classification of a record ~~[shall]~~ may not include considerations of weighing
54 public and private interests regarding access to a properly classified record as contained in
55 Subsection 63-2-403~~[(11)]~~ (12)(b) or 63-2-404~~[(8)]~~(7) or Section 63-2-308.

56 (2) Nothing in ~~[this]~~ Subsection (1)(b) shall be construed to limit the authority of the
57 State Board of Regents to reclassify and disclose a record of a public institution of higher
58 education.

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

60 **63-2-201. Right to inspect records and receive copies of records.**

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

64 (2) A record is public unless otherwise expressly provided by statute.

65 (3) The following records are not public:

66 (a) a record that is private, controlled, or protected under Sections 63-2-302,
67 63-2-302.5, 63-2-303, and 63-2-304; and

68 (b) a record to which access is restricted pursuant to court order, court rule, another
69 state statute, federal statute, or federal regulation, including records for which access is
70 governed or restricted as a condition of participation in a state or federal program or for
71 receiving state or federal funds.

72 (4) Only a record specified in Section 63-2-302, 63-2-302.5, 63-2-303, or 63-2-304
73 may be classified private, controlled, or protected.

74 (5) (a) A governmental entity may not disclose a record that is private, controlled, or
75 protected to any person except as provided in Subsection (5)(b), Section 63-2-202, 63-2-206, or
76 63-2-302.5.

77 (b) A governmental entity may disclose a record that is private under Subsection
78 63-2-302(2) or protected under Section 63-2-304 to persons other than those specified in
79 Section 63-2-202 or 63-2-206 if the head of a governmental entity, or a designee, determines
80 that:

81 (i) there is no interest in restricting access to the record; or

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

83 (6) (a) The disclosure of a record to which access is governed or limited pursuant to
84 court order, court rule, another state statute, federal statute, or federal regulation, including a
85 record for which access is governed or limited as a condition of participation in a state or
86 federal program or for receiving state or federal funds, is governed by the specific provisions of
87 that [~~statute~~] order, rule, statute, or regulation.

88 (b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter
89 is not inconsistent with the [~~statute~~] order, rule, statute, or regulation.

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

91 (a) the person requesting the record has a right to inspect [it] the record;

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

93 (c) the person pays the lawful fees.

94 (8) (a) ~~[A] In response to a request, a governmental entity is not required to:~~

95 ~~(i) create a record [in response to a request.]; or~~

96 ~~(ii) fulfill a person's records request if:~~

97 ~~(A) the request unreasonably duplicates prior records requests from that person; or~~

98 ~~(B) the information requested is included in a public publication or product produced~~
99 ~~by a governmental entity.~~

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

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

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

105 ~~[(c) Nothing in this section requires a governmental entity to fulfill a person's records~~
106 ~~request if the request unreasonably duplicates prior records requests from that person.]~~

107 (9) (a) A governmental entity may allow a person requesting more than 50 pages of
108 records to copy the records if:

109 (i) the records are contained in files that do not contain records that are exempt from
110 disclosure, or the records may be segregated to remove private, protected, or controlled
111 information from disclosure; and

112 (ii) the governmental entity provides reasonable safeguards to protect the public from
113 the potential for loss of a public record.

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

115 (i) provide the requester with the facilities for copying the requested records and
116 require that the requester make the copies; or

117 (ii) allow the requester to provide the requester's own copying facilities and personnel
118 to make the copies at the governmental entity's offices and waive the fees for copying the
119 records.

120 (10) (a) A governmental entity that owns an intellectual property right and that offers

121 the intellectual property right for sale or license may control by ordinance or policy the
122 duplication and distribution of the material based on terms the governmental entity considers to
123 be in the public interest.

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

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

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

132 Section 3. Section **63-2-202** is amended to read:

133 **63-2-202. Access to private, controlled, and protected documents.**

134 (1) Upon request, a governmental entity shall disclose a private record to:

135 (a) the subject of the record;

136 (b) the parent or legal guardian of an unemancipated minor who is the subject of the
137 record;

138 (c) the legal guardian of a legally incapacitated individual who is the subject of the
139 record;

140 (d) any other individual who:

141 (i) has a power of attorney from the subject of the record;

142 (ii) submits a notarized release from the subject of the record or his legal representative
143 dated no more than 90 days before the date the request is made; or

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

147 (e) any person to whom the record must be provided pursuant to:

148 (i) court order as provided in Subsection (7); or

149 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
150 Powers.

151 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:

152 (i) a physician, psychologist, certified social worker, insurance provider or producer, or
153 a government public health agency upon submission of:

154 (A) a release from the subject of the record that is dated no more than 90 days prior to
155 the date the request is made; and

156 (B) a signed acknowledgment of the terms of disclosure of controlled information as
157 provided by Subsection (2)(b); and

158 (ii) any person to whom the record must be disclosed pursuant to:

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

160 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
161 Powers.

162 (b) A person who receives a record from a governmental entity in accordance with
163 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,
164 including the subject of the record.

165 (3) If there is more than one subject of a private or controlled record, the portion of the
166 record that pertains to another subject shall be segregated from the portion that the requester is
167 entitled to inspect.

168 (4) Upon request, a governmental entity shall disclose a protected record to:

169 (a) the person who submitted the record;

170 (b) any other individual who:

171 (i) has a power of attorney from all persons, governmental entities, or political
172 subdivisions whose interests were sought to be protected by the protected classification; or

173 (ii) submits a notarized release from all persons, governmental entities, or political
174 subdivisions whose interests were sought to be protected by the protected classification or from
175 their legal representatives dated no more than 90 days prior to the date the request is made;

176 (c) any person to whom the record must be provided pursuant to:

177 (i) a court order as provided in Subsection (7); or

178 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
179 Powers; or

180 (d) the owner of a mobile home park, subject to the conditions of Subsection
181 41-1a-116(5).

182 (5) A governmental entity may disclose a private, controlled, or protected record to

183 another governmental entity, political subdivision, another state, the United States, or a foreign
184 government only as provided by Section 63-2-206.

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

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

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

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

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

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

194 (ii) business confidentiality interests in the case of records protected under Subsection
195 63-2-304(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

197 (d) to the extent the record is properly classified private, controlled, or protected, the
198 interests favoring access, considering limitations thereon, outweigh the interests favoring
199 restriction of access; and

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

203 (8) (a) A governmental entity may disclose or authorize disclosure of private or
204 controlled records for research purposes if the governmental entity:

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

207 (ii) determines that:

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

209 (B) the value of the research outweighs the infringement upon personal privacy;

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

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

214 (iv) prohibits the researcher from:
215 (A) disclosing the record in individually identifiable form, except as provided in
216 Subsection (8)(b); or
217 (B) using the record for purposes other than the research approved by the governmental
218 entity; and
219 (v) secures from the researcher a written statement of the researcher's understanding of
220 and agreement to the conditions of this Subsection (8) and the researcher's understanding that
221 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution
222 under Section 63-2-801.

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

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

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

- 231 (i) private under Section 63-2-302; or
- 232 (ii) protected under Section 63-2-304 subject to Section 63-2-308 if a claim for
233 business confidentiality has been made under Section 63-2-308.

234 (b) Under Subsection 63-2-403[~~(11)~~] (12)(b), the records committee may require the
235 disclosure to persons other than those specified in this section of records that are:

- 236 (i) private under Section 63-2-302;
- 237 (ii) controlled under Section 63-2-303; or
- 238 (iii) protected under Section 63-2-304 subject to Section 63-2-308 if a claim for
239 business confidentiality has been made under Section 63-2-308.

240 (c) Under Subsection 63-2-404[~~(8)~~](7), the court may require the disclosure of records
241 that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under
242 Section 63-2-304 to persons other than those specified in this section.

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

244 **63-2-204. Requests -- Time limit for response and extraordinary circumstances.**

245 (1) A person making a request for a record shall furnish the governmental entity with a
246 written request containing:

247 (a) the person's name, mailing address, and daytime telephone number, if available;

248 and

249 (b) a description of the record requested that identifies the record with reasonable
250 specificity.

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

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

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

259 (ii) denying the request;

260 (iii) notifying the requester that it does not maintain the record and providing, if
261 known, the name and address of the governmental entity that does maintain the record; or

262 (iv) notifying the requester that because of one of the extraordinary circumstances
263 listed in Subsection (4), it cannot immediately approve or deny the request.

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

265 (i) describe the circumstances relied upon; and

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

267 (c) Any person who requests a record to obtain information for a story or report for
268 publication or broadcast to the general public is presumed to be acting to benefit the public
269 rather than a person.

270 (4) The following circumstances constitute "extraordinary circumstances" that allow a
271 governmental entity to delay approval or denial by an additional period of time as specified in
272 Subsection (5) if the governmental entity determines that due to the extraordinary
273 circumstances it cannot respond within the time limits provided in Subsection (3):

274 (a) another governmental entity is using the record, in which case the originating
275 governmental entity shall promptly request that the governmental entity currently in possession

276 return the record;

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

279 (c) the request is:

280 (i) for a record that relates to a notice of claim filed under Title 63, Chapter 30d,
281 Governmental Immunity Act of Utah; and

282 (ii) submitted to the governmental entity during the period beginning with the date the
283 notice of claim is filed and ending on the date an action is filed in relation to the notice of
284 claim.

285 [~~e~~] (d) (i) the request is for a voluminous quantity of records or a record series
286 containing a substantial number of records;

287 (ii) the requester seeks a substantial number of records or records series in requests
288 filed within five working days of each other;

289 [~~f~~] (e) the governmental entity is currently processing a large number of records
290 requests;

291 [~~e~~] (f) the request requires the governmental entity to review a large number of
292 records to locate the records requested;

293 [~~f~~] (g) the decision to release a record involves legal issues that require the
294 governmental entity to seek legal counsel for the analysis of statutes, rules, ordinances,
295 regulations, or case law;

296 [~~g~~] (h) segregating information that the requester is entitled to inspect from
297 information that the requester is not entitled to inspect requires extensive editing; or

298 [~~h~~] (i) segregating information that the requester is entitled to inspect from
299 information that the requester is not entitled to inspect requires computer programming.

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

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

306 (b) for claims under Subsection (4)(b), the originating governmental entity shall notify

307 the requester when the record is available for inspection and copying;

308 (c) for claims under Subsections (4)(c), (d), ~~and~~ (e), and (f) the governmental entity
309 shall:

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

311 (ii) provide the requester with an estimate of the amount of time it will take to finish
312 the work required to respond to the request;

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

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

317 (A) require the person to provide for copying of the records as provided in Subsection
318 63-2-201(9); or

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

321 (d) for claims under Subsection (4)~~(f)~~(g), the governmental entity shall either approve
322 or deny the request within five business days after the response time specified for the original
323 request has expired;

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

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

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

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

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

336 Section 5. Section **63-2-401** is amended to read:

337 **63-2-401. Appeal to head of governmental entity.**

338 (1) (a) Any person aggrieved by a governmental entity's access determination under
339 this chapter, including a person not a party to the governmental entity's proceeding, may appeal
340 the determination [~~within 30 days to~~] by filing a notice of appeal with the chief administrative
341 officer of the governmental entity [~~by filing a notice of appeal~~] within 30 days after the date the
342 determination is issued.

343 (b) If a governmental entity claims extraordinary circumstances and specifies the date
344 when the records will be available under Subsection 63-2-204(3), and, if the requester believes
345 the extraordinary circumstances do not exist or that the time specified is unreasonable, the
346 requester may appeal the governmental entity's claim of extraordinary circumstances or date for
347 compliance by filing a notice of appeal within 30 days after [~~notification~~] the date the
348 governmental entity issues notice of a claim of extraordinary circumstances [~~by the~~
349 ~~governmental entity~~], despite the lack of a "determination" or its equivalent under Subsection
350 63-2-204(7).

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

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

353 (b) the relief sought.

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

356 (4) (a) If the appeal involves a record that is the subject of a business confidentiality
357 claim under Section 63-2-308, the chief administrative officer shall:

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

361 (ii) send notice of the business confidentiality claim and the schedule for the chief
362 administrative officer's determination to the requester within three business days after
363 [~~receiving~~] the date the chief administrative officer received notice of the requester's appeal.

364 (b) The claimant shall have seven business days after the date that notice is sent by the
365 administrative officer to submit further support for the claim of business confidentiality.

366 (5) (a) The chief administrative officer shall make a determination on the appeal within
367 the [~~following period of time~~] later of:

368 (i) [~~within~~] five business days after the date of the chief administrative officer's receipt

369 of the notice of appeal; or

370 (ii) ~~[within]~~ if the record or issue is subject to a claim of business confidentiality,
371 ~~[twelve]~~ 12 business days after the date the governmental entity sends the requester's notice of
372 appeal to a person who submitted a claim of business confidentiality.

373 (b) If the chief administrative officer fails to make a determination within the time
374 specified in Subsection (5)(a), the failure shall be considered the equivalent of an order denying
375 the appeal.

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

378 (6) The chief administrative officer may, upon consideration and weighing of the
379 various interests and public policies pertinent to the classification and disclosure or
380 nondisclosure, order the disclosure of information properly classified as private under Section
381 63-2-302(2) or protected under Section 63-2-304 if the interests favoring access outweigh the
382 interests favoring restriction of access.

383 (7) The governmental entity shall send written notice of the determination of the chief
384 administrative officer to all participants. If the chief administrative officer affirms the denial in
385 whole or in part, the denial shall include a statement containing:

386 (a) notice that the requester has the right to appeal the denial to ~~[either]~~ the records
387 committee ~~[or district court,];~~

388 (b) the time limits for filing an appeal[-]; and

389 (c) the name and business address of the executive secretary of the records committee.

390 (8) (a) A person ~~[aggrieved by a governmental entity's classification or designation~~
391 ~~determination under this chapter, but]~~ who is not requesting access to ~~[the records,]~~ a record
392 but is otherwise aggrieved by a governmental entity's classification or designation
393 determination made under this chapter may appeal that determination using the procedures
394 provided in this section.

395 (b) If a ~~[nonrequester]~~ person described in Subsection (8)(a) is the only appellant, the
396 procedures provided in this section shall apply, except that the determination on the appeal
397 shall be made within 30 days after ~~[receiving]~~ the date that the notice of appeal is received.

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

399 Section 6. Section **63-2-403** is amended to read:

400 **63-2-403. Appeals to the records committee.**

401 (1) ~~[A petitioner]~~ Any person or entity, including an aggrieved person who did not
402 participate in the appeal to the governmental entity's chief administrative officer, may appeal a
403 determination of the chief administrative officer to the records committee by filing a notice of
404 appeal with the executive secretary of the records committee no later than:

405 (a) 30 days after the date the chief administrative officer of the governmental entity
406 ~~[has granted or denied]~~ grants or denies the record request in whole or in part, including a
407 denial under Subsection 63-2-204(7); or

408 (b) 45 days after the date of the original request for a record if:

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

410 (ii) the chief administrative officer has failed to make a determination under Section
411 63-2-401.

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

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

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

415 (c) the relief sought.

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

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

420 (i) schedule a hearing for the records committee to discuss the appeal at the next
421 regularly scheduled committee meeting falling at least 14 days after the date the notice of
422 appeal is filed but no longer than 45 days after the date the notice of appeal was filed except
423 that the records committee may schedule an expedited hearing upon application of the
424 petitioner and good cause shown;

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

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

428 (A) each member of the records committee;

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

431 (C) any person who made a business confidentiality claim under Section 63-2-308 for a
432 record that is the subject of the appeal; and

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

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

439 (ii) (A) If the executive secretary of the records committee declines to schedule a
440 hearing under this Subsection (4)(b), the executive secretary of the records committee shall
441 send a notice to the petitioner indicating that the request for hearing has been denied and the
442 reason for the denial.

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

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

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

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

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

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

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

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

462 persons to comment on the issues.

463 (9) (a) The records committee may review the disputed records. However, if the
464 committee is weighing the various interests under Subsection [~~(11)~~] (12), the committee must
465 review the disputed records. The review shall be in camera.

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

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

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

474 [~~(e)~~] (11) The records committee's review shall be de novo.

475 [~~(11)~~] (12) (a) No later than three business days after the date of the hearing, the
476 records committee shall issue a signed order either:

477 (i) granting the petition in whole or in part; or

478 (ii) upholding the determination of the governmental entity in whole or in part.

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

483 (c) In making a determination under Subsection [~~(11)~~] (12)(b), the records committee
484 shall consider and, where appropriate, limit the requester's use and further disclosure of the
485 record in order to protect:

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

487 (ii) business confidentiality interests in the case of a record protected under Subsection
488 63-2-304(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

490 [~~(12)~~] (13) The order of the records committee shall include:

491 (a) a statement of reasons for the decision, including citations to this chapter, court rule
492 or order, another state statute, federal statute, or federal regulation that governs disclosure of

493 the record, provided that the citations do not disclose private, controlled, or protected
494 information;

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

498 (c) a statement that any party to the proceeding before the records committee may
499 appeal the records committee's decision to district court; [~~and~~]

500 (d) a brief summary of the appeals process[;];

501 (e) the time limits for filing an appeal[;]; and

502 (f) a notice that in order to protect its rights on appeal, the party may wish to seek
503 advice from an attorney.

504 [~~(13)~~] (14) If the records committee fails to issue a decision within 35 days [~~of the~~
505 ~~filing of~~] after the date the notice of appeal was filed, that failure shall be considered the
506 equivalent of an order denying the appeal. The petitioner shall notify the records committee in
507 writing if the petitioner considers the appeal denied.

508 [~~(14)(a) Unless a notice of intent to appeal is filed under Subsection (14)(b), each~~]

509 (15) (a) Each party to the proceeding shall comply with the order of the records
510 committee unless the order of the records committee is appealed under Section 63-2-404.

511 [~~(b) If a party disagrees with the order of the records committee, that party may file a~~
512 ~~notice of intent to appeal the order of the records committee.~~]

513 [~~(e)~~] (b) If the records committee orders [~~the~~] a governmental entity to produce a
514 record and no appeal is filed, or if, as a result of the appeal, the governmental entity is required
515 to produce a record, the governmental entity shall:

516 (i) produce the record; and

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

518 [~~(d)~~] (c) (i) If the governmental entity that is ordered to produce a record fails to file a
519 notice of compliance or a notice of intent to appeal, the records committee may do either or
520 both of the following:

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

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

523 (I) the governor for executive branch entities;

524 (II) the Legislative Management Committee for legislative branch entities; and
525 (III) the Judicial Council for judicial branch agencies entities.
526 (ii) In imposing a civil penalty, the records committee shall consider the gravity and
527 circumstances of the violation, including whether the failure to comply was due to neglect or
528 was willful or intentional.

529 Section 7. Section **63-2-404** is amended to read:

530 **63-2-404. Judicial review.**

531 (1) (a) Any party to a proceeding before the records committee may petition for judicial
532 review by the district court of the records committee's order.

533 (b) The petition shall be filed no later than 30 days after the date of the records
534 committee's order.

535 (c) The records committee is a necessary party to the petition for judicial review.

536 (d) The executive secretary of the records committee shall be served with notice of the
537 petition in accordance with the Utah Rules of Civil Procedure.

538 [~~(2) (a) A requester may petition for judicial review by the district court of a
539 governmental entity's determination as specified in Subsection 63-2-402 (1)(b).]~~

540 [~~(b) The requester shall file a petition no later than:]~~

541 [~~(i) 30 days after the governmental entity has responded to the records request by either
542 providing the requested records or denying the request in whole or in part;]~~

543 [~~(ii) 35 days after the original request if the governmental entity failed to respond to the
544 request; or]~~

545 [~~(iii) 45 days after the original request for records if:]~~

546 [~~(A) the circumstances described in Subsection 63-2-401(1)(b) occur; and]~~

547 [~~(B) the chief administrative officer failed to make a determination under Section
548 63-2-401.]~~

549 [~~(3)~~ (2) The petition for judicial review shall be a complaint governed by the Utah
550 Rules of Civil Procedure and shall contain:

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

552 (b) a copy of the records committee order from which the appeal is taken[~~;-if the
553 petitioner brought a prior appeal to the records committee;]~~;

554 (c) the name and mailing address of the governmental entity that issued the initial

555 determination with a copy of that determination;

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

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

558 ~~[(4)]~~ (3) If the appeal is based on the denial of access to a protected record, the court
559 shall allow the claimant of business confidentiality to provide to the court the reasons for the
560 claim of business confidentiality.

561 ~~[(5)]~~ (4) All additional pleadings and proceedings in the district court are governed by
562 the Utah Rules of Civil Procedure.

563 ~~[(6)]~~ (5) The district court may review the disputed records. The review shall be in
564 camera.

565 ~~[(7)]~~ (6) The court shall:

566 (a) make its decision de novo, but allow introduction of evidence presented to the
567 records committee;

568 (b) determine all questions of fact and law without a jury; and

569 (c) decide the issue at the earliest practical opportunity.

570 ~~[(8)]~~ (7) (a) The court may, upon consideration and weighing of the various interests
571 and public policies pertinent to the classification and disclosure or nondisclosure, order the
572 disclosure of information properly classified as private, controlled, or protected if the interest
573 favoring access outweighs the interest favoring restriction of access.

574 (b) The court shall consider and, where appropriate, limit the requester's use and
575 further disclosure of the record in order to protect privacy interests in the case of private or
576 controlled records, business confidentiality interests in the case of records protected under
577 Subsections 63-2-304(1) ~~[and]~~, (2), ~~(40)(a)(ii), or (40)(a)(vi)~~ and privacy interests or the public
578 interest in the case of other protected records.

579 Section 8. Section **63-2-701** is amended to read:

580 **63-2-701. Political subdivisions may adopt ordinances in compliance with**
581 **chapter.**

582 (1) (a) Each political subdivision may adopt an ordinance or a policy applicable
583 throughout its jurisdiction relating to information practices including classification,
584 designation, access, denials, segregation, appeals, management, retention, and amendment of
585 records.

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

587 (c) If any political subdivision does not adopt and maintain an ordinance or policy,
588 [~~then~~] that political subdivision is subject to this chapter.

589 (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision
590 is subject to Parts 1, General Provisions, and 3, Classification, and Sections 63-2-201,
591 63-2-202, 63-2-205, 63-2-206, 63-2-601, 63-2-602, 63-2-905, and 63-2-907.

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

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

597 (g) The report required by Subsection (1)(f) is notification to state archives of the
598 political subdivision's retention schedules, designations, and classifications. The report is not
599 subject to approval by state archives. If state archives determines that a different retention
600 schedule is needed for state purposes, state archives shall notify the political subdivision of the
601 state's retention schedule for the records and shall maintain the records if requested to do so
602 under Subsection 63-2-905(2).

603 (2) Each ordinance or policy relating to information practices shall:

604 (a) provide standards for the classification and designation of the records of the
605 political subdivision as public, private, controlled, or protected in accordance with Part 3 of
606 this chapter;

607 (b) require the classification of the records of the political subdivision in accordance
608 with those standards;

609 (c) provide guidelines for establishment of fees in accordance with Section 63-2-203;
610 and

611 (d) provide standards for the management and retention of the records of the political
612 subdivision comparable to Section 63-2-903.

613 (3) (a) Each ordinance or policy shall establish access criteria, procedures, and
614 response times for requests to inspect, obtain, or amend records of the political subdivision,
615 and time limits for appeals consistent with this chapter.

616 (b) In establishing response times for access requests and time limits for appeals, the

617 political subdivision may establish reasonable time frames different than those set out in
618 Section 63-2-204 and Part 4 [~~of this chapter~~], Appeals, if it determines that the resources of the
619 political subdivision are insufficient to meet the requirements of those sections.

620 (4) (a) The political subdivision shall establish an appeals process for persons
621 aggrieved by classification, designation or access decisions.

622 (b) The policy or ordinance shall provide for:

623 (i) an appeals board composed of the governing body of the political subdivision; or

624 (ii) a separate appeals board composed of members of the governing body and the
625 public, appointed by the governing body.

626 (5) [~~If the requester concurs, the~~] A decision of the appeals board established by the
627 political subdivision may [also provide for an additional level of administrative review to] be
628 appealed to the records committee in accordance with Section 63-2-403.

629 (6) Appeals of the decisions of the [~~appeals boards established by political~~
630 ~~subdivisions~~] records committee made under Subsection (5) shall be by petition for judicial
631 review to the district court. The contents of the petition for review and the conduct of the
632 proceeding shall be in accordance with [~~Sections 63-2-402 and~~] Section 63-2-404.

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

635 Section 9. Section **63-2-802** is amended to read:

636 **63-2-802. Injunction -- Attorneys' fees.**

637 (1) A district court in this state may enjoin any governmental entity or political
638 subdivision that violates or proposes to violate the provisions of this chapter.

639 (2) (a) A district court may assess against any governmental entity or political
640 subdivision reasonable attorneys' fees and other litigation costs reasonably incurred in
641 connection with a judicial appeal of a denial of a records request if the requester substantially
642 prevails.

643 (b) In determining whether to award attorneys' fees under this section, the court shall
644 consider:

645 (i) the public benefit derived from the case;

646 (ii) the nature of the requester's interest in the records; and

647 (iii) whether the governmental entity's or political subdivision's actions had a

648 reasonable basis.

649 (c) Attorneys' fees shall not ordinarily be awarded if the purpose of the litigation is
650 primarily to benefit the requester's financial or commercial interest.

651 (3) Neither attorneys' fees nor costs shall be awarded for fees or costs incurred during
652 administrative proceedings.

653 (4) Notwithstanding Subsection (2), a court may only award fees and costs incurred in
654 connection with appeals to district courts under [~~Subsection~~] Section 63-2-404[~~(2)~~] if the fees
655 and costs were incurred 20 or more days after the requester provided to the governmental entity
656 or political subdivision a statement of position that adequately explains the basis for the
657 requester's position.

658 (5) Claims for attorneys' fees as provided in this section or for damages are subject to
659 Title 63, Chapter 30d, Governmental Immunity Act of Utah.

660 Section 10. **Repealer.**

661 This bill repeals:

662 Section **63-2-402, Option for appealing a denial.**

Legislative Review Note
as of 11-9-05 8:26 AM

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

Legislative Committee Note
as of 12-15-05 11:17 AM

The Government Records Access and Management Task Force recommended this bill.