

## SB0157S01 compared with SB0157

~~{deleted text}~~ shows text that was in SB0157 but was deleted in SB0157S01.

inserted text shows text that was not in SB0157 but was inserted into SB0157S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

### GOVERNMENT RECORDS ~~{ACCESS AND MANAGEMENT ACT~~

#### ~~}~~AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies ~~{the Government Records Access and Management Act}~~provisions relating to government records.

##### Highlighted Provisions:

This bill:

- ▶ modifies the process of appealing the denial of a record request;
- ▶ ~~{eliminates the right of direct appeal to district court of a chief administrative officer decision affirming a denial of a record request; and~~
- ▶ ~~eliminates appeals to}~~modifies provisions relating to a political ~~{subdivision appeals boards for appeals of record request denials}~~subdivision's process for

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appealing a decision concerning records of the political subdivision;

- ▶ makes certain consumer complaints filed with the Division of Consumer Protection public records; and
- ▶ modifies the timeline that applies in an appeal to the records committee and allows the records committee to defer consideration of an appeal under certain circumstances.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

~~{53B-16-303}~~13-15-3, as last amended by Laws of Utah ~~{2008}~~2010, Chapter ~~{382}~~278

~~{63G-2-202}~~, as last amended by Laws of Utah 2014, Chapter 373

~~{63G-2-401}~~, as last amended by Laws of Utah 2012, Chapter 377

~~{63G-2-402}~~, as renumbered and amended by Laws of Utah 2008, Chapter 382

~~{63G-2-403}~~, as last amended by Laws of Utah 2013, Chapter 445

~~{63G-2-404}~~, as last amended by Laws of Utah 2012, Chapter 377

~~{63G-2-406}~~63G-2-501, as last amended by Laws of Utah 2013, Chapter ~~{445}~~231

~~{63G-2-701}~~, as last amended by Laws of Utah 2009, Chapter 131

ENACTS:

13-26-12, Utah Code Annotated 1953

~~{63G-2-802}~~63G-2-400.5, ~~{as renumbered and amended by Laws of}~~ Utah ~~{2008,~~  
~~Chapter 382}~~Code Annotated 1953

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

Section 1. Section 13-15-3 is amended to read:

**13-15-3. Administration and enforcement -- Powers -- Legal counsel -- Fees --**

**Consumer complaints.**

(1) The division shall administer and enforce this chapter. In the exercise of its

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responsibilities, the division shall enjoy the powers, and be subject to the constraints, set forth in Title 13, Chapter 2, Division of Consumer Protection.

(2) The attorney general, upon request, shall give legal advice to, and act as counsel for, the division in the exercise of its responsibilities under this chapter.

(3) All fees collected under this chapter shall be deposited in the Commerce Service Account created by Section 13-1-2.

(4) (a) As used in this Subsection (4), "consumer complaint" means a complaint:

(i) filed with the division by a consumer or business;

(ii) that alleges facts relating to conduct that the division regulates under this chapter;

and

(iii) (A) that alleges a loss to the consumer or business of \$3,500 or more; or

(B) that is one of at least 50 other complaints against the same person filed by other consumers or businesses.

(b) Notwithstanding Subsection 13-11-7(2) and subject to Subsection (4)(c), a consumer complaint:

(i) is a public record; and

(ii) may not be classified as a private, controlled, or protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(c) Before making a consumer complaint available to the public, the division may redact from the complaint:

(i) any information that would disclose the name, address, Social Security number, bank account information, email address, or telephone number of the consumer or business; or

(ii) any other information that could, in the division's judgment, disclose the identity of the consumer or business filing the consumer complaint.

Section ~~{1}~~2. Section ~~{53B-16-303 is amended to read:~~

~~53B-16-303. Access to restricted records.~~

~~}13-26-12 is enacted to read:~~

13-26-12. Consumer complaints are public.

(1) As used in this section, "consumer complaint" means a complaint:

(a) filed with the division by a consumer or business;

(b) that alleges facts relating to conduct that the division regulates under this chapter;

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and

- (c) (i) that alleges a loss to the consumer or business of \$3,500 or more; or
- (ii) that is one of at least 50 other complaints against the same person filed by other consumers or businesses.

(2) Notwithstanding ~~any other provision of~~ Subsection 13-11-7(2) and subject to Subsection (3), a consumer complaint:

- (a) is a public record; and
- (b) may not be classified as a private, controlled, or protected record under Title 63G,

Chapter 2, Government Records Access and Management Act, access to records restricted by this part shall only be permitted upon:

~~—— (1) written consent of the public institution of higher education originating, receiving, or maintaining such records; or~~

~~—— (2) a finding by the State Records Committee or a court that the record has not been properly classified as restricted under Section 63G-2-302, provided that the review of a restricted classification of a record shall not include considerations of weighing public and private interests regarding access to a properly classified record as contained in Subsection 63G-2-403(11)(b) or 63G-2-404[(8)](7) or Section 63G-2-309. Nothing in this Subsection (2) shall be construed to limit the authority of the State Board of Regents to reclassify and disclose a record of a public institution of higher education.~~

~~—— Section 2}.~~

(3) Before making a consumer complaint available to the public, the division may redact from the complaint:

- (a) any information that would disclose the name, address, Social Security number, bank account information, email address, or telephone number of the consumer or business; or
- (b) any other information that could, in the division's judgment, disclose the identity of the consumer or business filing the consumer complaint.

Section 3. Section ~~{63G-2-202}~~ 63G-2-400.5 is ~~{amended}~~ enacted to read:

~~{63G-2-202. Access to private, controlled, and protected documents.~~

~~—— (1) Upon request, and except as provided in Subsection (11)(a),~~ 63G-2-400.5. Definitions.

As used in this part:

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- (1) "Access denial" means a governmental entity shall disclose a private record to:
- (a) the subject of the record;
  - (b) the parent or legal guardian of an unemancipated minor who is the subject of the record;
  - (c) the legal guardian of a legally incapacitated individual who is the subject of the record;
  - (d) any other individual who:
    - (i) has a power of attorney from the subject of the record;
    - (ii) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or
    - (iii) if the record is a medical record described in ~~entity's denial, under~~ Subsection ~~(63G-2-302(1)(b), is a health care provider, as defined in Section 26-33a-102, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or~~
  - (e) any person to whom the record must be provided pursuant to:
    - (i) court order as provided in Subsection (7); or
    - (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers;
- (2) (a) Upon request, a governmental entity shall disclose a controlled record to:
- (i) a physician, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:
    - (A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and
    - (B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and
  - (ii) any person to whom the record must be disclosed pursuant to:
    - (A) a court order as provided in Subsection (7); or
    - (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers;
- (b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person;

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~~including the subject of the record:~~

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

~~—— (4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental entity shall disclose a protected record to:~~

~~—— (a) the person who submitted the record;~~

~~—— (b) any other individual who:~~

~~—— (i) has a power of attorney from all persons, governmental entities, or } 63G-2-204(8) or Section 63G-2-205, in whole or in part, of a record request.~~

(2) "Appellate affirmation" means a decision of a chief administrative officer, local appeals board, or records committee affirming an access denial.

(3) "Interested party" means a person, other than a requester, who is aggrieved by an access denial or an appellate affirmation, whether or not the person participated in proceedings leading to the access denial or appellate affirmation.

(4) "Local appeals board" means an appeals board established by a political subdivision under Subsection 63G-2-701(5)(c).

(5) "Record request" means a request for a record under Section 63G-2-204.

(6) "Records committee appellant" means:

(a) a political {subdivisions whose interests were sought to be protected by the protected classification; or

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

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

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

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

~~—— (d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5);~~

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

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~~another governmental entity, political subdivision, another state, the United States, or a foreign government only as provided by Section 63G-2-206:~~

~~—— (6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity:~~

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

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

~~—— (b) the court has considered the merits of the request for access to the record;~~

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

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

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

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

~~—— (d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access; and~~

~~—— (e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure:~~

~~—— (8) (a) Except as provided in Subsection (8)(d), a governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:~~

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

~~—— (ii) determines that:~~

~~—— (A) the proposed research is bona fide; and~~

~~—— (B) the value of the research is greater than or equal to the infringement upon personal privacy;~~

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

~~—— (B) requires the removal or destruction of the individual identifiers associated with the~~

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~~records as soon as the purpose of the research project has been accomplished;~~

~~—— (iv) prohibits the researcher from:~~

~~—— (A) disclosing the record in individually identifiable form, except as provided in Subsection (8)(b); or~~

~~—— (B) using the record for purposes other than the research approved by the governmental entity; and~~

~~—— (v) secures from the researcher a written statement of the researcher's understanding of and agreement to the conditions of this Subsection (8) and the researcher's understanding that violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution under Section 63G-2-801.~~

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

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

~~—— (d) A governmental entity may not disclose or authorize disclosure of a private record for research purposes as described in this Subsection (8) if the private record is a record described in Subsection 63G-2-302(1)(u).~~

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

~~—— (i) private under Section 63G-2-302; or~~

~~—— (ii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.~~

~~—— (b) Under Subsection 63G-2-403(11)(b), subdivision that seeks to appeal a decision of a local appeals board to the records committee; or~~

~~(b) a requester or interested party who seeks to appeal to the records committee ~~may~~ require the disclosure to persons other than those specified in this section of records that are:~~

~~—— (i) private under Section 63G-2-302;~~

~~—— (ii) controlled under Section 63G-2-304; or~~

~~—— (iii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for~~



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~~business confidentiality has been made under Section 63G-2-309.~~

~~— (c) Under Subsection 63G-2-404[(8)](7), the court may require the disclosure of records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected under Section 63G-2-305 to persons other than those specified in this section.~~

~~— (10) A record contained in the Management Information System, created in Section 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be disclosed to any person except the person who is alleged in the report to be a perpetrator of abuse, neglect, or dependency.~~

~~— (11) (a) A private record described in Subsection 63G-2-302(2)(g) may only be disclosed as provided in Subsection (1)(e).~~

~~— (b) A protected record described in Subsection 63G-2-305(43) may only be disclosed as provided in Subsection (4)(c) or Section 62A-3-312.~~

~~— (12) (a) A private, protected, or controlled record described in Section 62A-16-301 shall be disclosed as required under:~~

~~— (i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and~~

~~— (ii) Subsections 62A-16-302(1) and (6).~~

~~— (b) A record disclosed under Subsection (12)(a) shall retain its character as private, protected, or controlled.~~

~~— Section 3} a decision affirming an access denial.~~

(7) "Requester" means a person who submits a record request to a governmental entity.

Section 4. Section **63G-2-401** is amended to read:

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

~~— (1) (a) } chief administrative officer -- Notice of the determination of the appeal.~~

(1) (a) [Any person aggrieved by a governmental entity's access determination under this chapter, including a person not a party to the governmental entity's proceeding, may appeal the determination within 30 days] A requester or interested party may appeal an access denial to the chief administrative officer of the governmental entity by filing a notice of appeal within 30 days after the governmental entity sends a notice of denial under Section 63G-2-205.

(b) If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63G-2-204(3), and, if the requester believes the extraordinary circumstances do not exist or that the time specified is unreasonable,

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the requester may appeal the governmental entity's claim of extraordinary circumstances or date for compliance within 30 days after notification of a claim of extraordinary circumstances by the governmental entity, despite the lack of a "determination" or its equivalent under Subsection 63G-2-204~~(7)~~(8).

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

(a) the ~~petitioner's~~ name, mailing address, and daytime telephone number of the requester or interested party; and

(b) the relief sought.

(3) The ~~petitioner~~ requester or interested party may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) (a) If the appeal involves a record that is the subject of a business confidentiality claim under Section 63G-2-309, the chief administrative officer shall:

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

(ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester or interested party within three business days after receiving notice of the ~~requester's~~ appeal.

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

(5) (a) The chief administrative officer shall make a ~~determination~~ decision on the appeal within ~~the following period of time~~:

(i) ~~within~~ five business days after the chief administrative officer's receipt of the notice of appeal; or

(ii) ~~within~~ 12 business days after the governmental entity sends the ~~requester's~~ notice of appeal to a person who submitted a claim of business confidentiality.

(b) If the chief administrative officer fails to make a ~~determination~~ decision within the time specified in Subsection (5)(a), the failure ~~shall be considered~~ is the equivalent of ~~an order denying the appeal~~ a decision affirming the access denial.

(c) The provisions of this section notwithstanding, the parties participating in the

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proceeding may, by agreement, extend the time periods specified in this section.

(6) Except as provided in Section 63G-2-406, the chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if the interests favoring access are greater than or equal to the interests favoring restriction of access.

(7) (a) The governmental entity shall send written notice of the ~~[determination of the]~~ chief administrative ~~[officer]~~ officer's decision to all participants.

(b) If the chief administrative ~~[officer affirms the]~~ officer's decision is to affirm the access denial in whole or in part, the ~~[denial]~~ notice under Subsection (7)(a) shall include:

(i) a statement that the requester or interested party has the right to appeal the ~~[denial]~~ decision, as provided in Section 63G-2-402 ~~{,},~~ to [either]:

(A) the records committee [or];

(B) district court[-]; or

(C) the local appeals board, if the governmental entity is a political subdivision and the governmental entity has established a local appeals board;

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

(iii) the name and business address of:

(A) the executive secretary of the records committee[-]; and

(B) the individual designated as the contact individual for the appeals board, if the governmental entity is a political subdivision that has established an appeals board under Subsection 63G-2-701(5)(c).

(8) A person aggrieved by a governmental entity's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the ~~[determination]~~ decision on the appeal shall be made within 30 days after receiving the notice of appeal.

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

Section ~~{4}~~5. Section **63G-2-402** is amended to read:

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### 63G-2-402. ~~{Option for appealing a denial.~~

#### ~~(1) If the~~ Appealing a decision of a chief administrative officer.

~~(1) If the decision of the~~ chief administrative officer of a governmental entity ~~[denies a records request under Section 63G-2-401,~~ under Section 63G-2-401 is to affirm the denial of a record request, the requester may ~~{~~ ; ~~}~~

(a) ~~{~~ ; ~~}~~ appeal the ~~[denial]~~ decision to the records committee, ~~as provided in Section 63G-2-403;~~ ~~[~~ ; ~~]~~ ~~or~~ ~~{~~ ; ~~}~~

~~{~~ (b) petition for judicial review of the decision in district court, ~~as provided in Section 63G-2-404~~ ~~[-];~~ or

~~(2) Any person aggrieved by a determination of the chief administrative officer of a governmental entity under this chapter, including persons who did not participate in the governmental entity's proceeding, may appeal the determination to the records committee as provided in Section 63G-2-403.~~ ~~{~~

~~}~~

#### (c) appeal the decision to the local appeals board if:

(i) the decision is of a chief administrative officer of a governmental entity that is a political subdivision; and

(ii) the political subdivision has established a local appeals board.

(2) A requester who appeals a chief administrative officer's decision to the records committee or a local appeals board does not lose or waive the right to seek judicial review of the decision of the records committee or local appeals board.

(3) As provided in Section 63G-2-403, an interested party may appeal to the records committee a chief administrative officer's decision under Section 63G-2-401 affirming an access denial.

#### Section 6. Section 63G-2-403 is amended to read:

### **63G-2-403. Appeals to the records committee.**

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

(a) 30 days after the ~~[day on which the chief administrative officer of the governmental~~

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entity grants or denies the record request in whole or in part, including a denial under Subsection 63G-2-204(8); date of issuance of the decision being appealed; or

(b) 45 days after the day on which the original record request ~~{for a record is made if:~~

~~(i); for a record] is made if:~~

(i) the appeal is an appeal of a chief administrative officer's decision affirming an access denial;

~~(i)] (ii)~~ the circumstances described in Subsection 63G-2-401(1)(b) occur; and

~~(ii)] (iii)~~ the chief administrative officer ~~[failed]~~ fails to make a determination decision under Section 63G-2-401.

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

(a) contain the petitioner's name, mailing address, and daytime telephone number of the records committee appellant;

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

~~(c) }]~~

(b) be accompanied by a copy of the decision being appealed; and

(c) state the relief sought.

(3) The petitioner records committee appellant:

(a) shall, on the day on which the petitioner files an appeal to notice of appeal is filed with the records committee, serve a copy of the notice of appeal on:

(i) the government entity, ~~[described in Subsection (1), to which the appeal relates; and]~~ whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party; or

(ii) the requester or interested party who is a party to the local appeals board proceeding that resulted in the decision that the political subdivision is appealing to the records committee, if the records committee appellant is a political subdivision; and

(b) may file a short statement of facts, reasons, and legal authority in support of the appeal.

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

(i) schedule a hearing for the records committee to discuss the appeal at the next

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regularly scheduled committee meeting falling at least ~~[14]~~ 16 days after the date the notice of appeal is filed but no longer than ~~[52]~~ 64 calendar days after the date the notice of appeal was filed except that the records committee may schedule an expedited hearing upon application of the ~~[petitioner]~~ records committee appellant and good cause shown;

(ii) send a copy of the notice of hearing to the ~~[petitioner]~~ records committee appellant; and

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

(A) each member of the records committee;

(B) the records officer and the chief administrative officer of the governmental entity ~~[from which the appeal originated]~~ whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party;

(C) any person who made a business confidentiality claim under Section 63G-2-309 for a record that is the subject of the appeal; and

(D) all persons who participated in the proceedings before the governmental entity's chief administrative officer, if the appeal is of the chief administrative officer's decision affirming an access denial.

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

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

(B) The committee shall make rules to implement this section as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(5)(a) A]~~ (c) The executive secretary of the records committee may schedule a hearing on an appeal to the records committee at a regularly scheduled records committee meeting that is later than the period described in Subsection (4)(a)(i) if that records committee meeting is the first regularly scheduled records committee meeting at which there are fewer

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than 10 appeals scheduled to be heard.

(5) (a) [A] No later than five business days before the hearing, a governmental entity shall submit to the executive secretary of the records committee a written statement of facts, reasons, and legal authority in support of the governmental entity's position ~~[must be submitted to the executive secretary of the records committee not later than five business days before the hearing].~~

(b) The governmental entity shall send a copy of the written statement ~~[to the petitioner]~~ by first class mail, postage prepaid, to the requester or interested party involved in the appeal. The executive secretary shall forward a copy of the written statement to each member of the records committee.

(6) (a) No later than 10 business days after the notice of appeal is sent by the executive secretary, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the records committee.

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

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

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

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

(9) (a) (i) The records committee:

~~(A) may review the disputed records. However, if the committee is weighing the various interests under Subsection (11), the committee must review the disputed records. The review shall be in camera.]; and~~

(B) shall review the disputed records, if the committee is weighing the various interests under Subsection (11).

(ii) A review of the disputed records under Subsection (9)(a)(i) shall be in camera.

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

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chapter.

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

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

(c) (i) The records committee's review shall be de novo, subject to Subsection (10)(c)(ii).

(ii) Before completing its review of an appeal from the decision of a local appeals board, the records committee shall review and consider the written decision of the local appeals board.

(11) (a) No later than seven business days after the hearing, the records committee shall issue a signed order either:

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

(ii) upholding the [determination of the] governmental [entity] entity's access denial in whole or in part.

(b) Except as provided in Section 63G-2-406, the records committee may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access is greater than or equal to the interest favoring restriction of access.

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

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

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

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

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

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



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the record, ~~provided that~~ if the citations do not disclose private, controlled, or protected information;

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

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

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

(13) If the records committee fails to issue a decision within ~~57~~ 73 calendar days of the filing of the notice of appeal, that failure ~~shall be considered~~ is the equivalent of an order denying the appeal. ~~The petitioner~~ A records committee appellant shall notify the records committee in writing if the ~~petitioner~~ records committee appellant considers the appeal denied.

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

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

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

(i) produce the record; and

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

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

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

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

(I) the governor for executive branch entities;

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

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

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

Section ~~5~~7. Section **63G-2-404** is amended to read:

### **63G-2-404. Judicial review.**

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

~~[(b) The petition]~~

(1) (a) Except as provided in Subsection (2), a petition for judicial review of an order or decision, as allowed under this part, shall be filed no later than 30 days after the date of the [records committee's] order or decision.

~~[(c)] (b)~~ The records committee is a necessary party to ~~[the] a~~ petition for judicial review of a records committee order.

~~[(d)] (c)~~ The executive secretary of the records committee shall be served with notice of ~~[the] a~~ petition for judicial review of a records committee order, in accordance with the Utah Rules of Civil Procedure.

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

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

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

~~[(ii)] (b)~~ 35 days after the ~~[original] requester submits a record~~ request if the governmental entity ~~[failed] fails~~ to respond to the request; or ~~[(b)]~~

~~[(iii)] (c)~~ 45 days after the ~~[original] requester submits a record~~ request ~~[for records]~~ if: ~~[(b)]~~

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

~~[(B)] (ii)~~ the chief administrative officer ~~[failed] fails~~ to make a determination under Section 63G-2-401. ~~[(b)]~~

~~[(3) (The) (2)] A~~ ~~[(The)]~~ petition for judicial review ~~[shall be] is~~ a complaint

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governed by the Utah Rules of Civil Procedure and shall contain:

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

(b) a copy of the records committee order from which the appeal is taken~~(f)~~, if the petitioner ~~[brought a prior appeal to the]~~ is seeking judicial review of an order of the records committee~~(f)~~;

(c) the name and mailing address of the governmental entity that issued the initial determination with a copy of that determination;

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

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

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

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

~~(f)(6)(5)~~ The district court may review the disputed records. The review shall be in camera.

~~(f)(7)(6)~~ The court shall:

(a) make its decision de novo, but, for a petition seeking judicial review of a records committee order, allow introduction of evidence presented to the records committee;

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

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

~~(f)(8)(7)~~ (a) Except as provided in Section 63G-2-406, the court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the interest favoring access is greater than or equal to the interest favoring restriction of access.

(b) The court shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63G-2-305(1) and (2), and privacy interests or the public interest in the case of other protected records.

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Section ~~{6}~~8. Section ~~{63G-2-406}~~63G-2-501 is amended to read:

~~{~~ ~~63G-2-406. Evidentiary standards for release of certain enforcement and litigation records:~~

~~———— (1) A record that is classified as protected under Subsection 63G-2-305(10), (17), (18), (23), (24), or (33) may be ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404[(8)][(7)(a) only if the person or party seeking disclosure of the record has established, by a preponderance of the evidence, that the public interest favoring access is equal to or greater than the interest favoring restriction of access:~~

~~———— (2) A record that is classified as protected under Subsection 63G-2-305(11) may be ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404[(8)][(7) only if the person or party seeking disclosure of the record has established, by clear and convincing evidence, that the public interest favoring access is equal to or greater than the interest favoring restriction of access:~~

~~†~~ **63G-2-501. State Records Committee created -- Membership -- Terms -- Vacancies -- Expenses.**

(1) There is created the State Records Committee within the Department of Administrative Services to consist of the following seven individuals:

(a) an individual in the private sector whose profession requires the individual to create or manage records that if created by a governmental entity would be private or controlled;

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

(c) the governor or the governor's designee;

(d) two citizen members;

(e) one ~~[elected official]~~ person representing political subdivisions, as recommended by the Utah League of Cities and Towns; and

(f) one individual representing the news media.

(2) The members specified in Subsections (1)(a), (d), (e), and (f) shall be appointed by the governor with the consent of the Senate.

(3) (a) Except as required by Subsection (3)(b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the

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time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

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

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

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section ~~7~~9. Section **63G-2-701** is amended to read:

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

(1) As used in this section:

(a) "Access denial" means the same as that term is defined in Section 63G-2-400.5.

(b) "Interested party" means the same as that term is defined in Section 63G-2-400.5.

(c) "Requester" means the same as that term is defined in Section 63G-2-400.5.

~~(1)~~(2) (a) Each political subdivision may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention, and amendment of records.

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

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

(d) Notwithstanding the adoption of an ordinance or policy, each political subdivision is subject to ~~Parts 1 and 3~~ Part 1, General Provisions, Part 3, Classification, and Sections 63A-12-105, 63A-12-107, 63G-2-201, 63G-2-202, 63G-2-205, 63G-2-206, 63G-2-601, and 63G-2-602.

(e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed

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with the state archives no later than 30 days after its effective date.

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

(g) The report required by Subsection ~~[(1)]~~[(2)](f) is notification to state archives of the political subdivision's retention schedules, designations, and classifications. The report is not subject to approval by state archives. If state archives determines that a different retention schedule is needed for state purposes, state archives shall notify the political subdivision of the state's retention schedule for the records and shall maintain the records if requested to do so under Subsection 63A-12-105(2).

~~[(2)]~~[(3)] Each ordinance or policy relating to information practices shall:

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

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

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

(d) provide standards for the management and retention of the records of the political subdivision comparable to Section 63A-12-103.

~~[(3)]~~[(4)] (a) Each ordinance or policy shall establish access criteria, procedures, and response times for requests to inspect, obtain, or amend records of the political subdivision, and time limits for appeals consistent with this chapter.

(b) In establishing response times for access requests and time limits for appeals, the political subdivision may establish reasonable time frames different than those set out in Section 63G-2-204 and Part 4 ~~[of this chapter]~~, Appeals, if it determines that the resources of the political subdivision are insufficient to meet the requirements of those sections.

~~[(4)]~~[(5)] (a) ~~[The]~~A political subdivision shall establish an appeals process for persons aggrieved by classification, designation, or access decisions.

~~[(b)]~~ The policy or ordinance shall provide for:

~~[(1)]~~(i) (A) an appeals board composed of the governing body of the political

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subdivision; or ~~{ }~~]

~~[(B) a separate appeals board composed of members of the governing body and the public, appointed by the governing body; and { }]~~

~~[(ii) { } the designation of a person as the chief administrative officer for purposes of determining appeals under Section 63G-2-401 of the governmental entity's determination.]~~

~~[(5) If the requester concurs, the political subdivision may also provide for an additional level of administrative review to the records committee in accordance with Section 63G-2-403.]~~

(b) A political subdivision's appeals process shall include a process for a requester or interested party to appeal an access denial to a person designated by the political subdivision as the chief administrative officer for purposes of an appeal under Section 63G-2-401.

(c) (i) A political subdivision may establish an appeals board to decide an appeal of a decision of the chief administrative officer affirming an access denial.

(ii) An appeals board established by a political subdivision shall be composed of three members:

(A) one of whom shall be an employee of the political subdivision; and

(B) two of whom shall be members of the public, at least one of whom shall have professional experience with requesting or managing records.

(iii) If a political subdivision does not establish an appeals board, the political subdivision's appeals process shall provide for an appeal of a chief administrative officer's decision to the records committee, as provided in Section 63G-2-403.

~~[(6) Appeals of the decisions of the appeals boards established by political subdivisions shall be by { petition for judicial review to the district court.}]~~

~~— (5) (a) An appeal of the chief administrative officer shall be { }]~~

(6) (a) A political subdivision, requester, or interested party may appeal an appeals board decision:

(i) to the records committee, as provided in Section ~~{63G-2-402}~~ ~~63G-2-403~~; or

(ii) by filing a petition for judicial review [to] with the district court.

(b) The contents of [the { }] a petition for judicial review { } ~~{notice of appeal}~~ under Subsection (6)(a)(ii) and the conduct of the proceeding ~~{before the records committee}~~ shall be

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in accordance with ~~{}~~ Sections 63G-2-402 and 63G-2-404 ~~{}~~ Section 63G-2-403.

~~— [(7)] (6) :~~

(c) A person who appeals an appeals board decision to the records committee does not lose or waive the right to seek judicial review of the decision of the records committee.

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

~~{~~ ~~— Section 8. Section 63G-2-802 is amended to read:~~

~~— 63G-2-802. Injunction -- Attorney fees.~~

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

~~— (2) (a) A district court may assess against any governmental entity or political subdivision reasonable attorney fees and other litigation costs reasonably incurred in connection with a judicial appeal of a denial of a records request if the requester substantially prevails:~~

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

~~— (i) the public benefit derived from the case;~~

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

~~— (iii) whether the governmental entity's or political subdivision's actions had a reasonable basis.~~

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

~~— (3) Neither attorney fees nor costs shall be awarded for fees or costs incurred during administrative proceedings.~~

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

~~— [(5)] (4) Claims for attorney fees as provided in this section or for damages are subject to Title 63G, Chapter 7, Governmental Immunity Act of Utah.~~



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**Legislative Review Note**

~~as of 2-4-15 9:04 AM~~

~~Office of Legislative Research and General Counsel}~~