

PUBLIC TRANSIT DISTRICT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to public transit districts.

Highlighted Provisions:

This bill:

- ▶ prohibits a public transit district from spending public funds or contracting with a third party to restrict employee rights;
- ▶ eliminates an appeal to the chief administrative officer if the appeal is of a public transit district's denial of a record request;
- ▶ requires the state records committee to give precedence to an appeal from a public transit district's denial of a record request;
- ▶ requires de novo review by the state records committee of an appeal from a public transit district's denial of a record request and establishes a standard of review for deciding the appeal;
- ▶ requires the state records committee to award a reasonable attorney fee and costs to a successful appellant who appeals a public transit district's denial of a record request;
- ▶ modifies the basis upon which a court reviews a records committee order and establishes a standard of review for a records committee order that does not uphold a public transit district's access denial;
- ▶ eliminates a public transit district's authority to adopt an ordinance or policy relating



28 to public transit district records and makes public transit districts subject to the state code; and
29 ▶ eliminates a public transit district's authority to establish its own appeals process
30 relating to record requests.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37 **17B-2a-813**, as last amended by Laws of Utah 2013, Chapter 448
- 38 **63G-2-103**, as last amended by Laws of Utah 2015, Chapter 265
- 39 **63G-2-400.5**, as enacted by Laws of Utah 2015, Chapter 335
- 40 **63G-2-401**, as last amended by Laws of Utah 2015, Chapter 335
- 41 **63G-2-403**, as last amended by Laws of Utah 2015, Chapter 335
- 42 **63G-2-404**, as last amended by Laws of Utah 2015, Chapter 335
- 43 **63G-2-701**, as last amended by Laws of Utah 2015, Chapter 335



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

46 Section 1. Section **17B-2a-813** is amended to read:

47 **17B-2a-813. Rights, benefits, and protective conditions for employees of a public**
48 **transit district -- Strike prohibited -- Employees of an acquired transit system.**

49 (1) The rights, benefits, and other employee protective conditions and remedies of
50 Section 13(c) of the Urban Mass Transportation Act of 1964, 49 U.S.C. Sec. 5333(b), as
51 determined by the Secretary of Labor, apply to a public transit district's establishment and
52 operation of a public transit service or system.

53 (2) (a) Employees of a public transit system established and operated by a public transit
54 district have the right to:

- 55 (i) self-organization;
- 56 (ii) form, join, or assist labor organizations; and
- 57 (iii) bargain collectively through representatives of their own choosing.

58 (b) Employees of a public transit district and labor organizations may not join in a

59 strike against the public transit system operated by the public transit district.

60 (c) Each public transit district shall:

61 (i) recognize and bargain exclusively with any labor organization representing a
62 majority of the district's employees in an appropriate unit with respect to wages, salaries, hours,
63 working conditions, and welfare, pension, and retirement provisions; and

64 (ii) upon reaching agreement with the labor organization, enter into and execute a
65 written contract incorporating the agreement.

66 (3) If a public transit district acquires an existing public transit system:

67 (a) all employees of the acquired system who are necessary for the operation of the
68 acquired system, except executive and administrative officers and employees, shall be:

69 (i) transferred to and appointed employees of the acquiring public transit district; and

70 (ii) given sick leave, seniority, vacation, and pension or retirement credits in
71 accordance with the acquired system's records;

72 (b) members and beneficiaries of a pension or retirement plan or other program of
73 benefits that the acquired system has established shall continue to have rights, privileges,
74 benefits, obligations, and status with respect to that established plan or program; and

75 (c) the public transit district may establish, amend, or modify, by agreement with
76 employees or their authorized representatives, the terms, conditions, and provisions of a
77 pension or retirement plan or of an amendment or modification of a pension or retirement plan.

78 (4) A pension administrator for a retirement plan sponsored by a public transit district
79 or a person designated by the administrator shall maintain retirement records in accordance
80 with Subsection 49-11-618(2).

81 (5) A public transit district may not make an expenditure of public funds, or contract
82 with a third party, to diminish, challenge, dispute, litigate against, or otherwise restrict or deny
83 a person's right under this section or under Title 34, Chapter 34, Utah Right to Work Law.

84 Section 2. Section 63G-2-103 is amended to read:

85 **63G-2-103. Definitions.**

86 As used in this chapter:

87 (1) "Audit" means:

88 (a) a systematic examination of financial, management, program, and related records
89 for the purpose of determining the fair presentation of financial statements, adequacy of

90 internal controls, or compliance with laws and regulations; or

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

94 (2) "Chronological logs" mean the regular and customary summary records of law
95 enforcement agencies and other public safety agencies that show:

96 (a) the time and general nature of police, fire, and paramedic calls made to the agency;
97 and

98 (b) any arrests or jail bookings made by the agency.

99 (3) "Classification," "classify," and their derivative forms mean determining whether a
100 record series, record, or information within a record is public, private, controlled, protected, or
101 exempt from disclosure under Subsection [63G-2-201\(3\)\(b\)](#).

102 (4) (a) "Computer program" means:

103 (i) a series of instructions or statements that permit the functioning of a computer
104 system in a manner designed to provide storage, retrieval, and manipulation of data from the
105 computer system; and

106 (ii) any associated documentation and source material that explain how to operate the
107 computer program.

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

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

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

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

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

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

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

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

120 (6) "Controlled record" means a record containing data on individuals that is controlled

121 as provided by Section [63G-2-304](#).

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

127 (8) "Elected official" means each person elected to a state office, county office,
128 municipal office, school board or school district office, local district office, or special service
129 district office, but does not include judges.

130 (9) "Explosive" means a chemical compound, device, or mixture:

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

132 (b) that contains oxidizing or combustive units or other ingredients in proportions,
133 quantities, or packing so that:

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

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

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

138 (B) causing death or serious bodily injury.

139 (10) "Government audit agency" means any governmental entity that conducts an audit.

140 (11) (a) "Governmental entity" means:

141 (i) executive department agencies of the state, the offices of the governor, lieutenant
142 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
143 the Board of Examiners, the National Guard, the Career Service Review Office, the State
144 Board of Education, the State Board of Regents, and the State Archives;

145 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
146 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
147 committees, except any political party, group, caucus, or rules or sifting committee of the
148 Legislature;

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

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

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

156 (b) "Governmental entity" also means:

157 (i) every office, agency, board, bureau, committee, department, advisory board, or
158 commission of an entity listed in Subsection (11)(a) that is funded or established by the
159 government to carry out the public's business; and

160 (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative
161 undertaking.

162 (c) "Governmental entity" does not include the Utah Educational Savings Plan created
163 in Section 53B-8a-103.

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

168 (13) "Individual" means a human being.

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

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

174 (ii) names of victims;

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

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

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

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

182 (b) Initial contact reports do not include follow-up or investigative reports prepared

183 after the initial contact report. However, if the information specified in Subsection (14)(a)
184 appears in follow-up or investigative reports, it may only be treated confidentially if it is
185 private, controlled, protected, or exempt from disclosure under Subsection [63G-2-201\(3\)\(b\)](#).

186 (15) "Legislative body" means the Legislature.

187 (16) "Notice of compliance" means a statement confirming that a governmental entity
188 has complied with a records committee order.

189 (17) "Person" means:

190 (a) an individual;

191 (b) a nonprofit or profit corporation;

192 (c) a partnership;

193 (d) a sole proprietorship;

194 (e) other type of business organization; or

195 (f) any combination acting in concert with one another.

196 (18) "Private provider" means any person who contracts with a governmental entity to
197 provide services directly to the public.

198 (19) "Private record" means a record containing data on individuals that is private as
199 provided by Section [63G-2-302](#).

200 (20) "Protected record" means a record that is classified protected as provided by
201 Section [63G-2-305](#).

202 (21) "Public record" means a record that is not private, controlled, or protected and that
203 is not exempt from disclosure as provided in Subsection [63G-2-201\(3\)\(b\)](#).

204 (22) "Public transit district" means the same as that term is defined in Section
205 [17B-1-102](#).

206 [~~22~~] (23) (a) "Record" means a book, letter, document, paper, map, plan, photograph,
207 film, card, tape, recording, electronic data, or other documentary material regardless of physical
208 form or characteristics:

209 (i) that is prepared, owned, received, or retained by a governmental entity or political
210 subdivision; and

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

213 (b) "Record" does not mean:

214 (i) a personal note or personal communication prepared or received by an employee or
215 officer of a governmental entity:

216 (A) in a capacity other than the employee's or officer's governmental capacity; or

217 (B) that is unrelated to the conduct of the public's business;

218 (ii) a temporary draft or similar material prepared for the originator's personal use or
219 prepared by the originator for the personal use of an individual for whom the originator is
220 working;

221 (iii) material that is legally owned by an individual in the individual's private capacity;

222 (iv) material to which access is limited by the laws of copyright or patent unless the
223 copyright or patent is owned by a governmental entity or political subdivision;

224 (v) proprietary software;

225 (vi) junk mail or a commercial publication received by a governmental entity or an
226 official or employee of a governmental entity;

227 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections
228 of a library open to the public;

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

231 (ix) a daily calendar or other personal note prepared by the originator for the
232 originator's personal use or for the personal use of an individual for whom the originator is
233 working;

234 (x) a computer program that is developed or purchased by or for any governmental
235 entity for its own use;

236 (xi) a note or internal memorandum prepared as part of the deliberative process by:

237 (A) a member of the judiciary;

238 (B) an administrative law judge;

239 (C) a member of the Board of Pardons and Parole; or

240 (D) a member of any other body charged by law with performing a quasi-judicial
241 function;

242 (xii) a telephone number or similar code used to access a mobile communication
243 device that is used by an employee or officer of a governmental entity, provided that the
244 employee or officer of the governmental entity has designated at least one business telephone

245 number that is a public record as provided in Section 63G-2-301;

246 (xiii) information provided by the Public Employees' Benefit and Insurance Program,
247 created in Section 49-20-103, to a county to enable the county to calculate the amount to be
248 paid to a health care provider under Subsection 17-50-319(2)(e)(ii);

249 (xiv) information that an owner of unimproved property provides to a local entity as
250 provided in Section 11-42-205; or

251 (xv) a video or audio recording of an interview, or a transcript of the video or audio
252 recording, that is conducted at a Children's Justice Center established under Section 67-5b-102.

253 ~~[(23)]~~ (24) "Record series" means a group of records that may be treated as a unit for
254 purposes of designation, description, management, or disposition.

255 ~~[(24)]~~ (25) "Records committee" means the State Records Committee created in
256 Section 63G-2-501.

257 ~~[(25)]~~ (26) "Records officer" means the individual appointed by the chief
258 administrative officer of each governmental entity, or the political subdivision to work with
259 state archives in the care, maintenance, scheduling, designation, classification, disposal, and
260 preservation of records.

261 ~~[(26)]~~ (27) "Schedule," "scheduling," and their derivative forms mean the process of
262 specifying the length of time each record series should be retained by a governmental entity for
263 administrative, legal, fiscal, or historical purposes and when each record series should be
264 transferred to the state archives or destroyed.

265 ~~[(27)]~~ (28) "Sponsored research" means research, training, and other sponsored
266 activities as defined by the federal Executive Office of the President, Office of Management
267 and Budget:

268 (a) conducted:

269 (i) by an institution within the state system of higher education defined in Section
270 53B-1-102; and

271 (ii) through an office responsible for sponsored projects or programs; and

272 (b) funded or otherwise supported by an external:

273 (i) person that is not created or controlled by the institution within the state system of
274 higher education; or

275 (ii) federal, state, or local governmental entity.

276 [~~(28)~~] (29) "State archives" means the Division of Archives and Records Service
277 created in Section 63A-12-101.

278 [~~(29)~~] (30) "State archivist" means the director of the state archives.

279 [~~(30)~~] (31) "Summary data" means statistical records and compilations that contain
280 data derived from private, controlled, or protected information but that do not disclose private,
281 controlled, or protected information.

282 Section 3. Section 63G-2-400.5 is amended to read:

283 **63G-2-400.5. Definitions.**

284 As used in this part:

285 (1) "Access denial" means a governmental entity's denial, under Subsection
286 63G-2-204(8) or Section 63G-2-205, in whole or in part, of a record request.

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

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

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

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

295 (6) "Records committee appellant" means:

296 (a) a political subdivision, other than a public transit district, that seeks to appeal a
297 decision of a local appeals board to the records committee; or

298 (b) a requester or interested party who seeks to appeal to the records committee a
299 decision affirming an access denial.

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

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

302 **63G-2-401. Appeal to chief administrative officer -- Notice of the decision of the**
303 **appeal.**

304 (1) (a) A requester or interested party may appeal an access denial to the chief
305 administrative officer of the governmental entity by filing a notice of appeal with the chief
306 administrative officer within 30 days after:

307 (i) the governmental entity sends a notice of denial under Section 63G-2-205, if the
308 governmental entity denies a record request under Subsection 63G-2-205(1); or

309 (ii) the record request is considered denied under Subsection 63G-2-204(8), if that
310 subsection applies.

311 (b) If a governmental entity claims extraordinary circumstances and specifies the date
312 when the records will be available under Subsection 63G-2-204(3), and, if the requester
313 believes the extraordinary circumstances do not exist or that the date specified is unreasonable,
314 the requester may appeal the governmental entity's claim of extraordinary circumstances or date
315 for compliance to the chief administrative officer by filing a notice of appeal with the chief
316 administrative officer within 30 days after notification of a claim of extraordinary
317 circumstances by the governmental entity, despite the lack of a "determination" or its
318 equivalent under Subsection 63G-2-204(8).

319 (2) A notice of appeal shall contain:

320 (a) the name, mailing address, and daytime telephone number of the requester or
321 interested party; and

322 (b) the relief sought.

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

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

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

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

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

336 (5) (a) The chief administrative officer shall make a decision on the appeal within:

337 (i) five business days after the chief administrative officer's receipt of the notice of

338 appeal; or

339 (ii) 12 business days after the governmental entity sends the notice of appeal to a person
340 who submitted a claim of business confidentiality.

341 (b) (i) If the chief administrative officer fails to make a decision on an appeal of an
342 access denial within the time specified in Subsection (5)(a), the failure is the equivalent of a
343 decision affirming the access denial.

344 (ii) If the chief administrative officer fails to make a decision on an appeal under
345 Subsection (1)(b) within the time specified in Subsection (5)(a), the failure is the equivalent of
346 a decision affirming the claim of extraordinary circumstances or the reasonableness of the date
347 specified when the records will be available.

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

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

356 (7) (a) The governmental entity shall send written notice of the chief administrative
357 officer's decision to all participants.

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

360 (i) a statement that the requester or interested party has the right to appeal the decision,
361 as provided in Section [63G-2-402](#), to:

362 (A) the records committee or district court; or

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

365 (ii) the time limits for filing an appeal; and

366 (iii) the name and business address of:

367 (A) the executive secretary of the records committee; and

368 (B) the individual designated as the contact individual for the appeals board, if the

369 governmental entity is a political subdivision that has established an appeals board under
370 Subsection 63G-2-701(5)(c).

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

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

377 (10) A public transit district's denial, in whole or in part, of a record request is not
378 subject to an appeal to a chief administrative officer, as provided in this section, but may be
379 appealed directly to the records committee, as provided in this part.

380 Section 5. Section 63G-2-403 is amended to read:

381 **63G-2-403. Appeals to the records committee.**

382 (1) (a) A records committee appellant appeals to the records committee by filing a
383 notice of appeal with the executive secretary of the records committee no later than 30 days
384 after:

385 (i) the date of the access denial, for an appeal from a public transit district's access
386 denial; or

387 (ii) the date of issuance of the decision being appealed, for any other appeal.

388 (b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the
389 executive secretary of the records committee no later than 45 days after the day on which the
390 record request is made if:

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

392 (ii) the chief administrative officer fails to make a decision under Section 63G-2-401.

393 (2) The notice of appeal shall:

394 (a) contain the name, mailing address, and daytime telephone number of the records
395 committee appellant;

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

397 (c) state the relief sought.

398 (3) The records committee appellant:

399 (a) shall, on the day on which the notice of appeal is filed with the records committee,

400 serve a copy of the notice of appeal on:

401 (i) the governmental entity whose access denial is the subject of the appeal, if the
402 records committee appellant is a requester or interested party; or

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

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

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

410 (i) schedule a hearing for the records committee to discuss the appeal at the next
411 regularly scheduled committee meeting falling at least 16 days after the date the notice of
412 appeal is filed but no longer than 64 calendar days after the date the notice of appeal was filed
413 except that the records committee may schedule an expedited hearing upon application of the
414 records committee appellant and good cause shown;

415 (ii) send a copy of the notice of hearing to the records committee appellant; and

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

418 (A) each member of the records committee;

419 (B) the records officer and the chief administrative officer of the governmental entity
420 whose access denial is the subject of the appeal, if the records committee appellant is a
421 requester or interested party;

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

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

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

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

435 (B) The committee shall make rules to implement this section as provided by Title
436 63G, Chapter 3, Utah Administrative Rulemaking Act.

437 (c) The executive secretary of the records committee may schedule a hearing on an
438 appeal to the records committee at a regularly scheduled records committee meeting that is
439 later than the period described in Subsection (4)(a)(i) if that records committee meeting is the
440 first regularly scheduled records committee meeting at which there are fewer than 10 appeals
441 scheduled to be heard.

442 (d) The records committee shall give precedence to an appeal from a public transit
443 district's access denial and schedule a hearing as expeditiously as possible.

444 (5) (a) No later than five business days before the hearing, a governmental entity shall
445 submit to the executive secretary of the records committee a written statement of facts, reasons,
446 and legal authority in support of the governmental entity's position.

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

451 (6) (a) No later than 10 business days after the notice of appeal is sent by the executive
452 secretary, a person whose legal interests may be substantially affected by the proceeding may
453 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) (i) The records committee:

464 (A) may review the disputed records; and

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

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

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

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

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

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

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

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

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

483 (iii) For an appeal from a public transit district's access denial:

484 (A) the records committee's review shall be de novo; and

485 (B) the records committee may not uphold the access denial unless there is specific
486 statutory language, clearly applicable to the contested record, that requires nondisclosure of the
487 record.

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

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

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

492 (b) Except as provided in Section 63G-2-406, the records committee may, upon

493 consideration and weighing of the various interests and public policies pertinent to the
494 classification and disclosure or nondisclosure, order the disclosure of information properly
495 classified as private, controlled, or protected if the public interest favoring access is greater
496 than or equal to the interest favoring restriction of access.

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

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

501 (ii) business confidentiality interests in the case of a record protected under Subsection
502 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

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

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

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

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

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

516 (e) for an appeal of a public transit district's access denial, an award to the records
517 committee appellant of the records committee appellant's reasonable attorney fees and costs
518 incurred in pursuing the appeal, if the records committee order does not uphold the public
519 transit district's access denial.

520 (13) If the records committee fails to issue a decision within 73 calendar days of the
521 filing of the notice of appeal, that failure is the equivalent of an order denying the appeal. A
522 records committee appellant shall notify the records committee in writing if the records
523 committee appellant considers the appeal denied.

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

527 (b) A records committee appellant may bring a judicial action in district court seeking
528 enforcement of an award of attorney fees and costs under Subsection (12)(e).

529 (15) (a) Unless a notice of intent to appeal is filed under Subsection (15)(b), each party
530 to the proceeding shall comply with the order of the records committee.

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

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

536 (i) produce the record; and

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

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

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

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

543 (I) the governor for executive branch entities;

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

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

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

549 Section 6. Section 63G-2-404 is amended to read:

550 **63G-2-404. Judicial review.**

551 (1) (a) A petition for judicial review of an order or decision, as allowed under this part
552 or in Subsection 63G-2-701(6)(a)(ii), shall be filed no later than 30 days after the date of the
553 order or decision.

554 (b) The records committee is a necessary party to a petition for judicial review of a

555 records committee order.

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

559 (2) A petition for judicial review is a complaint governed by the Utah Rules of Civil
560 Procedure and shall contain:

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

562 (b) a copy of the records committee order from which the appeal is taken, if the
563 petitioner is seeking judicial review of an order of the records committee;

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

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

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

568 (3) If the ~~[appeal]~~ petition is based on the denial of access to a protected record based
569 on a claim of business confidentiality, the court shall allow the claimant of business
570 confidentiality to provide to the court the reasons for the claim of business confidentiality.

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

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

574 (6) The court shall:

575 (a) ~~[make its decision]~~ (i) except as provided in Subsection (6)(a)(ii), decide the
576 petition de novo, but, for a petition seeking judicial review of a records committee order, allow
577 introduction of evidence presented to the records committee; and

578 (ii) decide the petition on the record of the records committee, if the petition seeks
579 review of a records committee order that does not uphold a public transit district's access
580 denial;

581 (b) for a records committee order that does not uphold a public transit district's access
582 denial, affirm the records committee's decision unless the decision is clearly illegal or arbitrary;

583 ~~[(b)]~~ (c) determine all questions of fact and law without a jury; and

584 ~~[(c)]~~ (d) decide the ~~[issue]~~ petition at the earliest practical opportunity.

585 (7) (a) Except as provided in Section 63G-2-406, the court may, upon consideration

586 and weighing of the various interests and public policies pertinent to the classification and
587 disclosure or nondisclosure, order the disclosure of information properly classified as private,
588 controlled, or protected if the interest favoring access is greater than or equal to the interest
589 favoring restriction of access.

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

595 Section 7. Section 63G-2-701 is amended to read:

596 **63G-2-701. Political subdivisions may adopt ordinances in compliance with**
597 **chapter -- Appeal process.**

598 (1) As used in this section:

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

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

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

602 (2) (a) Each political subdivision, except a public transit district, may adopt an
603 ordinance or a policy applicable throughout its jurisdiction relating to information practices
604 including classification, designation, access, denials, segregation, appeals, management,
605 retention, and amendment of records.

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

607 (c) ~~[If any political subdivision does not adopt and maintain an ordinance or policy;~~
608 ~~then that]~~ A political subdivision is subject to this chapter[-:] if:

609 (i) the political subdivision does not adopt and maintain an ordinance or policy; or

610 (ii) the political subdivision is a public transit district.

611 (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision
612 is subject to Part 1, General Provisions, Part 3, Classification, and Sections 63A-12-105,
613 63A-12-107, 63G-2-201, 63G-2-202, 63G-2-205, 63G-2-206, 63G-2-601, and 63G-2-602.

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

616 (f) The political subdivision shall also report to the state archives all retention

617 schedules, and all designations and classifications applied to record series maintained by the
618 political subdivision.

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

625 (3) Each ordinance or policy relating to information practices shall:

626 (a) provide standards for the classification and designation of the records of the
627 political subdivision as public, private, controlled, or protected in accordance with Part 3,
628 Classification;

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

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

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

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

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

642 (5) (a) A political subdivision authorized under Subsection (2) to adopt an ordinance or
643 policy shall establish an appeals process for persons aggrieved by classification, designation, or
644 access decisions.

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

648 (c) (i) A political subdivision authorized under Subsection (2) to adopt an ordinance or
649 policy may establish an appeals board to decide an appeal of a decision of the chief
650 administrative officer affirming an access denial.

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

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

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

656 (iii) If a political subdivision establishes an appeals board, any appeal of a decision of a
657 chief administrative officer shall be made to the appeals board.

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

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

662 (i) to the records committee, as provided in Section [63G-2-403](#); or

663 (ii) by filing a petition for judicial review with the district court.

664 (b) The contents of a petition for judicial review under Subsection (6)(a)(ii) and the
665 conduct of the proceeding shall be in accordance with Sections [63G-2-402](#) and [63G-2-404](#).

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

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