

**Senator Karen Mayne** proposes the following substitute bill:

**PUBLIC TRANSIT DISTRICT AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karen Mayne**

House Sponsor: Jeremy A. Peterson

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to public transit districts.

**Highlighted Provisions:**

This bill:

▶ defines "large public transit district" for purposes of open meetings provisions and government records provisions;

▶ adds a subcommittee of the board of trustees of a large public transit district to the definition of "public body," for purposes of open meetings laws;

▶ requires a four-fifths vote of the board of trustees or a subcommittee of the board of trustees of a large public transit district in order to close an open meeting;

▶ requires a court to award reasonable attorney fees and court costs to a successful plaintiff in an action against a large public transit district with respect to open meetings law violations;

▶ eliminates an appeal to the chief administrative officer if the appeal is of a large public transit district's denial of a record request;

▶ requires the state records committee to give precedence to an appeal from a large public transit district's denial of a record request;

▶ requires de novo review by the state records committee of an appeal from a large



26 public transit district's denial of a record request and establishes a standard of review for  
27 deciding the appeal;

28       ▶ requires the state records committee to award reasonable attorney fees and costs to a  
29 successful appellant who appeals a large public transit district's denial of a record  
30 request;

31       ▶ modifies the basis upon which a court reviews a records committee order and  
32 establishes a standard of review for a records committee order that does not uphold  
33 a large public transit district's access denial;

34       ▶ eliminates a large public transit district's authority to adopt an ordinance or policy  
35 relating to large public transit district records and makes large public transit districts  
36 subject to the state code; and

37       ▶ eliminates a large public transit district's authority to establish its own appeals  
38 process relating to record requests.

39 **Money Appropriated in this Bill:**

40       None

41 **Other Special Clauses:**

42       None

43 **Utah Code Sections Affected:**

44 AMENDS:

45       52-4-103, as last amended by Laws of Utah 2016, Chapter 77

46       52-4-204, as last amended by Laws of Utah 2013, Chapter 426

47       52-4-303, as last amended by Laws of Utah 2006, Chapter 263 and renumbered and  
48 amended by Laws of Utah 2006, Chapter 14

49       52-4-304, as last amended by Laws of Utah 2008, Chapter 382

50       63G-2-103, as last amended by Laws of Utah 2015, Chapter 265

51       63G-2-400.5, as enacted by Laws of Utah 2015, Chapter 335

52       63G-2-401, as last amended by Laws of Utah 2015, Chapter 335

53       63G-2-403, as last amended by Laws of Utah 2015, Chapter 335

54       63G-2-404, as last amended by Laws of Utah 2015, Chapter 335

55       63G-2-701, as last amended by Laws of Utah 2015, Chapter 335

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

58 Section 1. Section **52-4-103** is amended to read:

59 **52-4-103. Definitions.**

60 As used in this chapter:

61 (1) "Anchor location" means the physical location from which:

62 (a) an electronic meeting originates; or

63 (b) the participants are connected.

64 (2) "Capitol hill complex" means the grounds and buildings within the area bounded by

65 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake

66 City.

67 (3) "Convening" means the calling together of a public body by a person authorized to

68 do so for the express purpose of discussing or acting upon a subject over which that public

69 body has jurisdiction or advisory power.

70 (4) "Electronic meeting" means a public meeting convened or conducted by means of a

71 conference using electronic communications.

72 (5) "Electronic message" means a communication transmitted electronically, including:

73 (a) electronic mail;

74 (b) instant messaging;

75 (c) electronic chat;

76 (d) text messaging as defined in Section [76-4-401](#); or

77 (e) any other method that conveys a message or facilitates communication

78 electronically.

79 (6) "Large public transit district" means a public transit district under Title 17B,

80 Chapter 2a, Part 8, Public Transit District Act, that has more than 200,000 people residing

81 within the boundary of the public transit district.

82 ~~[(6)]~~ (7) (a) "Meeting" means the convening of a public body or a specified body, with

83 a quorum present, including a workshop or an executive session, whether in person or by

84 means of electronic communications, for the purpose of discussing, receiving comments from

85 the public about, or acting upon a matter over which the public body or specific body has

86 jurisdiction or advisory power.

87 (b) "Meeting" does not mean:

88 (i) a chance gathering or social gathering; or

89 (ii) a convening of the State Tax Commission to consider a confidential tax matter in  
90 accordance with Section 59-1-405.

91 (c) "Meeting" does not mean the convening of a public body that has both legislative  
92 and executive responsibilities if:

93 (i) no public funds are appropriated for expenditure during the time the public body is  
94 convened; and

95 (ii) the public body is convened solely for the discussion or implementation of  
96 administrative or operational matters:

97 (A) for which no formal action by the public body is required; or

98 (B) that would not come before the public body for discussion or action.

99 ~~[(7)]~~ (8) "Monitor" means to hear or observe, live, by audio or video equipment, all of  
100 the public statements of each member of the public body who is participating in a meeting.

101 ~~[(8)]~~ (9) "Participate" means the ability to communicate with all of the members of a  
102 public body, either verbally or electronically, so that each member of the public body can hear  
103 or observe the communication.

104 ~~[(9)]~~ (10) (a) "Public body" means:

105 (i) any administrative, advisory, executive, or legislative body of the state or ~~[its]~~ the  
106 state's political subdivisions that:

107 ~~[(i)]~~ (A) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

108 ~~[(ii)]~~ (B) consists of two or more persons;

109 ~~[(iii)]~~ (C) expends, disburses, or is supported in whole or in part by tax revenue; and

110 ~~[(iv)]~~ (D) is vested with the authority to make decisions regarding the public's  
111 business~~[-];~~ or

112 (ii) a subcommittee of the board of trustees of a large public transit district.

113 (b) "Public body" includes, as defined in Section 11-13-103, an interlocal entity or joint  
114 or cooperative undertaking.

115 (c) "Public body" does not include a:

116 (i) political party, political group, or political caucus;

117 (ii) conference committee, rules committee, or sifting committee of the Legislature; or

118 (iii) school community council or charter trust land council as defined in Section

119 53A-1a-108.1.

120 ~~[(10)]~~ (11) "Public statement" means a statement made in the ordinary course of  
121 business of the public body with the intent that all other members of the public body receive it.

122 ~~[(11)]~~ (12) (a) "Quorum" means a simple majority of the membership of a public body,  
123 unless otherwise defined by applicable law.

124 (b) "Quorum" does not include a meeting of two elected officials by themselves when  
125 no action, either formal or informal, is taken on a subject over which these elected officials  
126 have advisory power.

127 ~~[(12)]~~ (13) "Recording" means an audio, or an audio and video, record of the  
128 proceedings of a meeting that can be used to review the proceedings of the meeting.

129 ~~[(13)]~~ (14) "Specified body":

130 (a) means an administrative, advisory, executive, or legislative body that:

131 (i) is not a public body;

132 (ii) consists of three or more members; and

133 (iii) includes at least one member who is:

134 (A) a legislator; and

135 (B) officially appointed to the body by the president of the Senate, speaker of the  
136 House of Representatives, or governor; and

137 (b) does not include a body listed in Subsection ~~[(9)]~~ (10)(c)(ii).

138 ~~[(14)]~~ (15) "Transmit" means to send, convey, or communicate an electronic message  
139 by electronic means.

140 Section 2. Section 52-4-204 is amended to read:

141 **52-4-204. Closed meeting held upon vote of members -- Business -- Reasons for**  
142 **meeting recorded.**

143 (1) A closed meeting may be held if:

144 (a) (i) a quorum is present;

145 (ii) the meeting is an open meeting for which notice has been given under Section  
146 52-4-202; and

147 (iii) (A) two-thirds of the members of the public body present at the open meeting vote  
148 to approve closing the meeting;

149 (B) for a meeting that is required to be closed under Section 52-4-205, if a majority of

150 the members of the public body present at an open meeting vote to approve closing the  
151 meeting;

152 (C) for an ethics committee of the Legislature that is conducting an open meeting for  
153 the purpose of reviewing an ethics complaint, a majority of the members present vote to  
154 approve closing the meeting for the purpose of seeking or obtaining legal advice on legal,  
155 evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the  
156 complaint; [or]

157 (D) for the Political Subdivisions Ethics Review Commission established in Section  
158 11-49-201 that is conducting an open meeting for the purpose of reviewing an ethics complaint  
159 in accordance with Section 11-49-701, a majority of the members present vote to approve  
160 closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary,  
161 or procedural matters, or for conducting deliberations to reach a decision on the complaint; or

162 (E) for a meeting of the board of trustees or a subcommittee of the board of trustees of  
163 a large public transit district, four-fifths of the members of the board of trustees or  
164 subcommittee, respectively, present at an open meeting vote to approve closing the meeting; or

165 (b) (i) for the Independent Legislative Ethics Commission, the closed meeting is  
166 convened for the purpose of conducting business relating to the receipt or review of an ethics  
167 complaint, provided that public notice of the closed meeting is given under Section 52-4-202,  
168 with the agenda for the meeting stating that the meeting will be closed for the purpose of  
169 "conducting business relating to the receipt or review of ethics complaints";

170 (ii) for the Political Subdivisions Ethics Review Commission established in Section  
171 11-49-201, the closed meeting is convened for the purpose of conducting business relating to  
172 the preliminary review of an ethics complaint in accordance with Section 11-49-602, provided  
173 that public notice of the closed meeting is given under Section 52-4-202, with the agenda for  
174 the meeting stating that the meeting will be closed for the purpose of "conducting business  
175 relating to the review of ethics complaints"; or

176 (iii) for the Independent Executive Branch Ethics Commission created in Section  
177 63A-14-202, the closed meeting is convened for the purpose of conducting business relating to  
178 an ethics complaint, provided that public notice of the closed meeting is given under Section  
179 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the  
180 purpose of "conducting business relating to an ethics complaint."

181 (2) A closed meeting is not allowed unless each matter discussed in the closed meeting  
182 is permitted under Section 52-4-205.

183 (3) An ordinance, resolution, rule, regulation, contract, or appointment may not be  
184 approved at a closed meeting.

185 (4) The following information shall be publicly announced and entered on the minutes  
186 of the open meeting at which the closed meeting was approved:

187 (a) the reason or reasons for holding the closed meeting;

188 (b) the location where the closed meeting will be held; and

189 (c) the vote by name, of each member of the public body, either for or against the  
190 motion to hold the closed meeting.

191 (5) Except as provided in Subsection 52-4-205(2), nothing in this chapter shall be  
192 construed to require any meeting to be closed to the public.

193 Section 3. Section 52-4-303 is amended to read:

194 **52-4-303. Enforcement of chapter -- Suit to compel compliance.**

195 (1) The attorney general and county attorneys of the state shall enforce this chapter.

196 (2) The attorney general shall, on at least a yearly basis, provide notice to all public  
197 bodies that are subject to this chapter of any material changes to the requirements for the  
198 conduct of meetings under this chapter.

199 (3) A person denied any right under this chapter may commence suit in a court of  
200 competent jurisdiction to:

201 (a) compel compliance with or enjoin violations of this chapter; or

202 (b) determine the chapter's applicability to discussions or decisions of a public body.

203 (4) (a) The court may award reasonable attorney fees and court costs to a successful  
204 plaintiff.

205 (b) In an action under this section against a large public transit district, the court shall  
206 award reasonable attorney fees and court costs to a successful plaintiff.

207 Section 4. Section 52-4-304 is amended to read:

208 **52-4-304. Action challenging closed meeting.**

209 (1) Notwithstanding the procedure established under Subsection 63G-2-202(7), in any  
210 action brought under the authority of this chapter to challenge the legality of a closed meeting  
211 held by a public body, the court shall:

- 212 (a) review the recording or written minutes of the closed meeting in camera; and
- 213 (b) decide the legality of the closed meeting.
- 214 (2) (a) If the judge determines that the public body did not violate Section 52-4-204,
- 215 52-4-205, or 52-4-206 regarding closed meetings, the judge shall dismiss the case without
- 216 disclosing or revealing any information from the recording or minutes of the closed meeting.
- 217 (b) If the judge determines that the public body violated Section 52-4-204, 52-4-205, or
- 218 52-4-206 regarding closed meetings, the judge shall:
- 219 (i) publicly disclose or reveal from the recording or minutes of the closed meeting all
- 220 information about the portion of the meeting that was illegally closed[-]; and
- 221 (ii) award the plaintiff reasonable attorney fees and court costs, if the action was
- 222 brought to challenge the legality of a closed meeting held by the board of trustees or a
- 223 subcommittee of the board of trustees of a large public transit district.

224 Section 5. Section 63G-2-103 is amended to read:

225 **63G-2-103. Definitions.**

226 As used in this chapter:

227 (1) "Audit" means:

228 (a) a systematic examination of financial, management, program, and related records

229 for the purpose of determining the fair presentation of financial statements, adequacy of

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

231 (b) a systematic examination of program procedures and operations for the purpose of

232 determining their effectiveness, economy, efficiency, and compliance with statutes and

233 regulations.

234 (2) "Chronological logs" mean the regular and customary summary records of law

235 enforcement agencies and other public safety agencies that show:

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

237 and

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

239 (3) "Classification," "classify," and their derivative forms mean determining whether a

240 record series, record, or information within a record is public, private, controlled, protected, or

241 exempt from disclosure under Subsection 63G-2-201(3)(b).

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



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

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

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

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

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

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

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

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

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

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

260 (6) "Controlled record" means a record containing data on individuals that is controlled  
261 as provided by Section [63G-2-304](#).

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

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

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

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

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

274 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the  
275 compound or mixture may cause a sudden generation of highly heated gases; and  
276 (ii) the resultant gaseous pressures are capable of:  
277 (A) producing destructive effects on contiguous objects; or  
278 (B) causing death or serious bodily injury.

279 (10) "Government audit agency" means any governmental entity that conducts an audit.  
280 (11) (a) "Governmental entity" means:  
281 (i) executive department agencies of the state, the offices of the governor, lieutenant  
282 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,  
283 the Board of Examiners, the National Guard, the Career Service Review Office, the State  
284 Board of Education, the State Board of Regents, and the State Archives;  
285 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal  
286 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative  
287 committees, except any political party, group, caucus, or rules or sifting committee of the  
288 Legislature;  
289 (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar  
290 administrative units in the judicial branch;  
291 (iv) any state-funded institution of higher education or public education; or  
292 (v) any political subdivision of the state, but, if a political subdivision has adopted an  
293 ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this  
294 chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or  
295 as specified in any other section of this chapter that specifically refers to political subdivisions.

296 (b) "Governmental entity" also means:  
297 (i) every office, agency, board, bureau, committee, department, advisory board, or  
298 commission of an entity listed in Subsection (11)(a) that is funded or established by the  
299 government to carry out the public's business; and  
300 (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative  
301 undertaking.  
302 (c) "Governmental entity" does not include the Utah Educational Savings Plan created  
303 in Section 53B-8a-103.

304 (12) "Gross compensation" means every form of remuneration payable for a given

305 period to an individual for services provided including salaries, commissions, vacation pay,  
306 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any  
307 similar benefit received from the individual's employer.

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

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

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

314 (ii) names of victims;

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

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

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

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

322 (b) Initial contact reports do not include follow-up or investigative reports prepared  
323 after the initial contact report. However, if the information specified in Subsection (14)(a)  
324 appears in follow-up or investigative reports, it may only be treated confidentially if it is  
325 private, controlled, protected, or exempt from disclosure under Subsection [63G-2-201\(3\)\(b\)](#).

326 (15) "Large public transit district" means a public transit district under Title 17B,  
327 Chapter 2a, Part 8, Public Transit District Act, that has more than 200,000 people residing  
328 within the boundary of the public transit district.

329 [~~15~~] (16) "Legislative body" means the Legislature.

330 [~~16~~] (17) "Notice of compliance" means a statement confirming that a governmental  
331 entity has complied with a records committee order.

332 [~~17~~] (18) "Person" means:

333 (a) an individual;

334 (b) a nonprofit or profit corporation;

335 (c) a partnership;

336 (d) a sole proprietorship;

337 (e) other type of business organization; or

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

339 [~~18~~] (19) "Private provider" means any person who contracts with a governmental  
340 entity to provide services directly to the public.

341 [~~19~~] (20) "Private record" means a record containing data on individuals that is  
342 private as provided by Section 63G-2-302.

343 [~~20~~] (21) "Protected record" means a record that is classified protected as provided by  
344 Section 63G-2-305.

345 [~~21~~] (22) "Public record" means a record that is not private, controlled, or protected  
346 and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

347 [~~22~~] (23) (a) "Record" means a book, letter, document, paper, map, plan, photograph,  
348 film, card, tape, recording, electronic data, or other documentary material regardless of physical  
349 form or characteristics:

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

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

354 (b) "Record" does not mean:

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

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

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

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

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

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

365 (v) proprietary software;

366 (vi) junk mail or a commercial publication received by a governmental entity or an

367 official or employee of a governmental entity;

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

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

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

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

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

378 (A) a member of the judiciary;

379 (B) an administrative law judge;

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

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

383 (xii) a telephone number or similar code used to access a mobile communication  
384 device that is used by an employee or officer of a governmental entity, provided that the  
385 employee or officer of the governmental entity has designated at least one business telephone  
386 number that is a public record as provided in Section [63G-2-301](#);

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

390 (xiv) information that an owner of unimproved property provides to a local entity as  
391 provided in Section [11-42-205](#); or

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

394 ~~[(23)]~~ (24) "Record series" means a group of records that may be treated as a unit for  
395 purposes of designation, description, management, or disposition.

396 ~~[(24)]~~ (25) "Records committee" means the State Records Committee created in  
397 Section [63G-2-501](#).

398           ~~[(25)]~~ (26) "Records officer" means the individual appointed by the chief  
399 administrative officer of each governmental entity, or the political subdivision to work with  
400 state archives in the care, maintenance, scheduling, designation, classification, disposal, and  
401 preservation of records.

402           ~~[(26)]~~ (27) "Schedule," "scheduling," and their derivative forms mean the process of  
403 specifying the length of time each record series should be retained by a governmental entity for  
404 administrative, legal, fiscal, or historical purposes and when each record series should be  
405 transferred to the state archives or destroyed.

406           ~~[(27)]~~ (28) "Sponsored research" means research, training, and other sponsored  
407 activities as defined by the federal Executive Office of the President, Office of Management  
408 and Budget:

409           (a) conducted:

410           (i) by an institution within the state system of higher education defined in Section  
411 [53B-1-102](#); and

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

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

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

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

417           ~~[(28)]~~ (29) "State archives" means the Division of Archives and Records Service  
418 created in Section [63A-12-101](#).

419           ~~[(29)]~~ (30) "State archivist" means the director of the state archives.

420           ~~[(30)]~~ (31) "Summary data" means statistical records and compilations that contain  
421 data derived from private, controlled, or protected information but that do not disclose private,  
422 controlled, or protected information.

423           Section 6. Section **63G-2-400.5** is amended to read:

424           **63G-2-400.5. Definitions.**

425           As used in this part:

426           (1) "Access denial" means a governmental entity's denial, under Subsection  
427 [63G-2-204](#)(8) or Section [63G-2-205](#), in whole or in part, of a record request.

428           (2) "Appellate affirmation" means a decision of a chief administrative officer, local

429 appeals board, or records committee affirming an access denial.

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

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

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

436 (6) "Records committee appellant" means:

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

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

441 (7) "Requester" means a person who submits a record request to a governmental entity.  
442 Section 7. Section 63G-2-401 is amended to read:

443 **63G-2-401. Appeal to chief administrative officer -- Notice of the decision of the**  
444 **appeal.**

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

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

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

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

460 (2) A notice of appeal shall contain:

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

463 (b) the relief sought.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

501 (i) a statement that the requester or interested party has the right to appeal the decision,  
502 as provided in Section 63G-2-402, to:

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

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

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

507 (iii) the name and business address of:

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

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

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

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

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

521 Section 8. Section 63G-2-403 is amended to read:

522 **63G-2-403. Appeals to the records committee.**

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

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

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

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

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

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

534 (2) The notice of appeal shall:

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

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

538 (c) state the relief sought.

539 (3) The records committee appellant:

540 (a) shall, on the day on which the notice of appeal is filed with the records committee,  
541 serve a copy of the notice of appeal on:

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

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

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

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

551 (i) schedule a hearing for the records committee to discuss the appeal at the next  
552 regularly scheduled committee meeting falling at least 16 days after the date the notice of

553 appeal is filed but no longer than 64 calendar days after the date the notice of appeal was filed  
554 except that the records committee may schedule an expedited hearing upon application of the  
555 records committee appellant and good cause shown;

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

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

559 (A) each member of the records committee;

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

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

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

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

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

576 (B) The committee shall make rules to implement this section as provided by Title  
577 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

583 (d) The records committee shall give precedence to an appeal from a large public

584 transit district's access denial and schedule a hearing as expeditiously as possible.

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

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

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

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

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

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

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

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

605 (A) may review the disputed records; and

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

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

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

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

614 (b) When the subject of a records committee subpoena disobeys or fails to comply with

615 the subpoena, the records committee may file a motion for an order to compel obedience to the  
616 subpoena with the district court.

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

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

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

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

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

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

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

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

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

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

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

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

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

642 (ii) business confidentiality interests in the case of a record protected under Subsection  
643 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

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

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

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

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

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

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

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

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

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

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

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

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

- 677 (i) produce the record; and
- 678 (ii) file a notice of compliance with the records committee.
- 679 (d) (i) If the governmental entity that is ordered to produce a record fails to file a notice
- 680 of compliance or a notice of intent to appeal, the records committee may do either or both of
- 681 the following:
  - 682 (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or
  - 683 (B) send written notice of the governmental entity's noncompliance to:
    - 684 (I) the governor for executive branch entities;
    - 685 (II) the Legislative Management Committee for legislative branch entities; and
    - 686 (III) the Judicial Council for judicial branch agencies entities.
  - 687 (ii) In imposing a civil penalty, the records committee shall consider the gravity and
  - 688 circumstances of the violation, including whether the failure to comply was due to neglect or
  - 689 was willful or intentional.

690 Section 9. Section **63G-2-404** is amended to read:

691 **63G-2-404. Judicial review.**

692 (1) (a) A petition for judicial review of an order or decision, as allowed under this part

693 or in Subsection **63G-2-701(6)(a)(ii)**, shall be filed no later than 30 days after the date of the

694 order or decision.

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

696 records committee order.

697 (c) The executive secretary of the records committee shall be served with notice of a

698 petition for judicial review of a records committee order, in accordance with the Utah Rules of

699 Civil Procedure.

700 (2) A petition for judicial review is a complaint governed by the Utah Rules of Civil

701 Procedure and shall contain:

- 702 (a) the petitioner's name and mailing address;
- 703 (b) a copy of the records committee order from which the appeal is taken, if the
- 704 petitioner is seeking judicial review of an order of the records committee;
- 705 (c) the name and mailing address of the governmental entity that issued the initial
- 706 determination with a copy of that determination;
- 707 (d) a request for relief specifying the type and extent of relief requested; and

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

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

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

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

715 (6) The court shall:

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

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

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

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

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

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

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

737 Section 10. Section 63G-2-701 is amended to read:

738 **63G-2-701. Political subdivisions may adopt ordinances in compliance with**



739 **chapter -- Appeal process.**

740 (1) As used in this section:

741 (a) "Access denial" means the same as that term is defined in Section [63G-2-400.5](#).742 (b) "Interested party" means the same as that term is defined in Section [63G-2-400.5](#).743 (c) "Requester" means the same as that term is defined in Section [63G-2-400.5](#).744 (2) (a) Each political subdivision, except a large public transit district, may adopt an  
745 ordinance or a policy applicable throughout its jurisdiction relating to information practices  
746 including classification, designation, access, denials, segregation, appeals, management,  
747 retention, and amendment of records.

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

749 (c) ~~[If any political subdivision does not adopt and maintain an ordinance or policy,~~  
750 ~~then that]~~ A political subdivision is subject to this chapter[-:] if:751 (i) the political subdivision does not adopt and maintain an ordinance or policy; or752 (ii) the political subdivision is a large public transit district.753 (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision  
754 is subject to Part 1, General Provisions, Part 3, Classification, and Sections [63A-12-105](#),  
755 [63A-12-107](#), [63G-2-201](#), [63G-2-202](#), [63G-2-205](#), [63G-2-206](#), [63G-2-601](#), and [63G-2-602](#).756 (e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed  
757 with the state archives no later than 30 days after its effective date.758 (f) The political subdivision shall also report to the state archives all retention  
759 schedules, and all designations and classifications applied to record series maintained by the  
760 political subdivision.761 (g) The report required by Subsection (2)(f) is notification to state archives of the  
762 political subdivision's retention schedules, designations, and classifications. The report is not  
763 subject to approval by state archives. If state archives determines that a different retention  
764 schedule is needed for state purposes, state archives shall notify the political subdivision of the  
765 state's retention schedule for the records and shall maintain the records if requested to do so  
766 under Subsection [63A-12-105\(2\)](#).

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

768 (a) provide standards for the classification and designation of the records of the  
769 political subdivision as public, private, controlled, or protected in accordance with Part 3,

770 Classification;

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

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

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

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

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

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

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

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

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

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

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

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

800 (iv) If a political subdivision does not establish an appeals board, the political

801 subdivision's appeals process shall provide for an appeal of a chief administrative officer's  
802 decision to the records committee, as provided in Section 63G-2-403.

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

804 (i) to the records committee, as provided in Section 63G-2-403; or

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

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

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

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