

SB0025S01 compared with SB0025

~~{deleted text}~~ shows text that was in SB0025 but was deleted in SB0025S01.

Inserted text shows text that was not in SB0025 but was inserted into SB0025S01.

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Senator Wayne A. Harper proposes the following substitute bill:

RECORDS COMMITTEES

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: ~~{_____}~~ Adam Robertson

LONG TITLE

~~{Committee Note:~~

~~—The Government Operations Interim Committee recommended this bill.~~

~~}General Description:~~

This bill creates the Records Management Committee and modifies provisions related to the State Records Committee.

Highlighted Provisions:

This bill:

- ▶ modifies the membership and responsibilities of the State Records Committee;
- ▶ creates the Records Management Committee;
- ▶ establishes provisions for the administration of the Records Management Committee;
- ▶ transfers certain duties of the State Records Committee to the Records Management

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Committee; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 31A-2-207**, as last amended by Laws of Utah 2008, Chapter 382
- 35A-4-503**, as last amended by Laws of Utah 2008, Chapter 382
- 46-4-501**, as last amended by Laws of Utah 2011, Chapter 270
- 63A-12-101**, as last amended by Laws of Utah 2010, Chapter 341
- 63A-12-103**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 63A-12-106**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 63A-12-111**, as last amended by Laws of Utah 2018, Chapter 81
- 63G-2-103**, as amended by Statewide Initiative -- Proposition 4, Nov. 6, 2018
- 63G-2-202**, as last amended by Laws of Utah 2018, Chapter 270
- 63G-2-309**, as last amended by Laws of Utah 2013, Chapter 445
- 63G-2-400.5**, as enacted by Laws of Utah 2015, Chapter 335
- 63G-2-401**, as last amended by Laws of Utah 2017, Chapter 435
- 63G-2-402**, as last amended by Laws of Utah 2015, Chapter 335
- 63G-2-403**, as last amended by Laws of Utah 2018, Chapter 425
- 63G-2-404**, as last amended by Laws of Utah 2017, Chapter 435
- 63G-2-501**, as last amended by Laws of Utah 2015, Chapter 335
- 63G-2-502**, as last amended by Laws of Utah 2018, Chapter 256
- 63G-2-604**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 63G-2-701**, as last amended by Laws of Utah 2017, Chapter 435
- 63G-2-801**, as last amended by Laws of Utah 2013, Chapter 298

ENACTS:

- 63A-12-112**, Utah Code Annotated 1953
- 63A-12-113**, Utah Code Annotated 1953

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

Section 1. Section **31A-2-207** is amended to read:

31A-2-207. Commissioner's records and reports -- Protection from disclosure of certain records.

(1) The commissioner shall maintain all department records that are:

- (a) required by law;
- (b) necessary for the effective operation of the department; or
- (c) necessary to maintain a full record of department activities.

(2) The records of the department may be preserved, managed, stored, and made available for review consistent with:

- (a) another Utah statute;
- (b) the rules made under Section 63A-12-104;
- (c) the decisions of the [~~State Records Committee made under Title 63G, Chapter 2, Government Records Access and Management Act~~] Records Management Committee made

under Section 63A-12-113; or

(d) the needs of the public.

(3) A department record may not be destroyed, damaged, or disposed of without:

- (a) authorization of the commissioner; and
- (b) compliance with all other applicable laws.

(4) The commissioner shall maintain a permanent record of the commissioner's proceedings and important activities, including:

(a) a concise statement of the condition of each insurer examined by the commissioner; and

(b) a record of all certificates of authority and licenses issued by the commissioner.

(5) (a) Prior to October 1 of each year, the commissioner shall prepare an annual report to the governor which shall include, for the preceding calendar year, the information concerning the department and the insurance industry which the commissioner believes will be useful to the governor and the public.

(b) The report required by this Subsection (5) shall include the information required under Chapter 27a, Insurer Receivership Act, and Subsections 31A-2-106(2), 31A-2-205(3),

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and 31A-2-208(3).

(c) The commissioner shall make the report required by this Subsection (5) available to the public and industry in electronic format.

(6) All department records and reports are open to public inspection unless specifically provided otherwise by statute or by Title 63G, Chapter 2, Government Records Access and Management Act.

(7) On request, the commissioner shall provide to any person certified or uncertified copies of any record in the department that is open to public inspection.

(8) Notwithstanding Subsection (6) and Title 63G, Chapter 2, Government Records Access and Management Act, the commissioner shall protect from disclosure any record, as defined in Section 63G-2-103, or other document received from an insurance regulator of another jurisdiction:

(a) at least to the same extent the record or document is protected from disclosure under the laws applicable to the insurance regulator providing the record or document; or

(b) under the same terms and conditions of confidentiality as the National Association of Insurance Commissioners requires as a condition of participating in any of the National Association of Insurance Commissioners' programs.

Section 2. Section **35A-4-503** is amended to read:

35A-4-503. Destruction or disposal of records or reports by division -- Procedure.

The division may destroy or dispose of reports or records [~~as have been~~] that are properly recorded or summarized in the payment records of the division, or that are [~~deemed~~] no longer necessary in the proper administration of this chapter in accordance with [~~the requirements of the state records committee pursuant to Section 63G-2-502~~] an applicable records retention schedule approved by the Records Management Committee under Section 63A-12-113.

Section 3. Section **46-4-501** is amended to read:

46-4-501. Creation and retention of electronic records and conversion of written records by governmental agencies.

(1) A state governmental agency may, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that:

(a) identify specific transactions that the agency is willing to conduct by electronic

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means;

(b) identify specific transactions that the agency will never conduct by electronic

means;

(c) specify the manner and format in which electronic records must be created, generated, sent, communicated, received, and stored, and the systems established for those purposes;

(d) if law or rule requires that the electronic records must be signed by electronic means, specify the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met, by any third party used by a person filing a document to facilitate the process;

(e) specify control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(f) identify any other required attributes for electronic records that are specified for corresponding nonelectronic records or that are reasonably necessary under the circumstances.

(2) A state governmental agency that makes rules under this section shall submit copies of those rules, and any amendments to those rules, to the chief information officer established by Section 63F-1-201.

(3) (a) The chief information officer may prepare model rules and standards relating to electronic transactions that encourage and promote consistency and interoperability with similar requirements adopted by other Utah government agencies, other states, the federal government, and nongovernmental persons interacting with Utah governmental agencies.

(b) In preparing those model rules and standards, the chief information officer may specify different levels of standards from which governmental agencies may choose in order to implement the most appropriate standard for a particular application.

(c) Nothing in this Subsection (3) requires a state agency to use the model rules and standards prepared by the chief information officer when making rules under this section.

(4) Except as provided in Subsection 46-4-301(6), nothing in this chapter requires any state governmental agency to:

(a) conduct transactions by electronic means; or

(b) use or permit the use of electronic records or electronic signatures.

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(5) Each state governmental agency shall:

(a) establish record retention schedules for any electronic records created or received in an electronic transaction according to the standards developed by the Division of Archives under Subsection 63A-12-101(2)(e); and

(b) obtain approval of those schedules from the [~~State Records Committee~~] Records Management Committee as required by Subsection [~~63G-2-502(1)(b)~~] 63A-12-113(1)(b).

Section 4. Section **63A-12-101** is amended to read:

63A-12-101. Division of Archives and Records Service created -- Duties.

(1) There is created the Division of Archives and Records Service within the Department of Administrative Services.

(2) The state archives shall:

(a) administer the state's archives and records management programs, including storage of records, central microphotography programs, and quality control;

(b) apply fair, efficient, and economical management methods to the collection, creation, use, maintenance, retention, preservation, disclosure, and disposal of records and documents;

(c) establish standards, procedures, and techniques for the effective management and physical care of records;

(d) conduct surveys of office operations and recommend improvements in current records management practices, including the use of space, equipment, automation, and supplies used in creating, maintaining, storing, and servicing records;

(e) establish standards for the preparation of schedules providing for the retention of records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, historical, legal, or fiscal value to warrant further retention;

(f) establish, maintain, and operate centralized microphotography lab facilities and quality control for the state;

(g) provide staff and support services to the [~~records committee~~] Records Management Committee created in Section 63A-12-112 and the State Records Committee created in Section 63G-2-501;

(h) develop training programs to assist records officers and other interested officers and

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employees of governmental entities to administer this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;

(i) provide access to public records deposited in the archives;

(j) administer and maintain the Utah Public Notice Website established under Section 63F-1-701;

(k) provide assistance to any governmental entity in administering this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;

(l) prepare forms for use by all governmental entities for a person requesting access to a record; and

(m) if the department operates the Division of Archives and Records Service as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:

(i) the proposed rate and fee schedule as required by Section 63A-1-114; and

(ii) other information or analysis requested by the Rate Committee.

(3) The state archives may:

(a) establish a report and directives management program; and

(b) establish a forms management program.

(4) The executive director of the Department of Administrative Services may direct the state archives to administer other functions or services consistent with this chapter and Title 63G, Chapter 2, Government Records Access and Management Act.

Section 5. Section **63A-12-103** is amended to read:

63A-12-103. Duties of governmental entities.

The chief administrative officer of each governmental entity shall:

(1) establish and maintain an active, continuing program for the economical and efficient management of the governmental entity's records as provided by this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;

(2) appoint one or more records officers who will be trained to work with the state archives in the care, maintenance, scheduling, disposal, classification, designation, access, and preservation of records;

(3) ensure that officers and employees of the governmental entity that receive or process records requests receive required training on the procedures and requirements of this

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chapter and Title 63G, Chapter 2, Government Records Access and Management Act;

(4) make and maintain adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the governmental entity designed to furnish information to protect the legal and financial rights of persons directly affected by the entity's activities;

(5) submit to the state archivist proposed schedules of records for final approval by the ~~[records committee]~~ Records Management Committee created in Section 63A-12-112;

(6) cooperate with the state archivist in conducting surveys made by the state archivist;

(7) comply with rules issued by the Department of Administrative Services as provided by Section 63A-12-104;

(8) report to the state archives the designation of record series that it maintains;

(9) report to the state archives the classification of each record series that is classified;

and

(10) establish and report to the state archives retention schedules for objects that the governmental entity determines are not defined as a record under Section 63G-2-103, but that have historical or evidentiary value.

Section 6. Section **63A-12-106** is amended to read:

63A-12-106. Certified and microphotographed copies.

(1) Upon demand, the state archives shall furnish certified copies of a record in ~~[its]~~ the state archives's exclusive custody that is classified public or that is otherwise determined to be public under this chapter by the originating governmental entity, the ~~[records committee]~~ State Records Committee created in Section 63G-2-501, or a court of law. When certified by the state archivist under the seal of the state archives, ~~[the]~~ a copy has the same legal force and effect as if certified by the originating governmental entity.

(2) The state archives may microphotograph records when ~~[it]~~ the state archives determines that microphotography is an efficient and economical way to care, maintain, and preserve the record. A transcript, exemplification, or certified copy of a microphotograph has the same legal force and effect as the original. Upon review and approval of the microphotographed film by the state archivist, the source documents may be destroyed.

(3) The state archives may allow another governmental entity to microphotograph records in accordance with standards set by the state archives.

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Section 7. Section **63A-12-111** is amended to read:

63A-12-111. Government records ombudsman.

(1) (a) The director of the division shall appoint a government records ombudsman.

(b) The government records ombudsman may not be a member of the [~~records committee~~] State Records Committee created in Section 63G-2-501.

(2) The government records ombudsman shall:

(a) be familiar with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act;

(b) serve as a resource for a person who is making or responding to a records request or filing an appeal relating to a records request;

(c) upon request, attempt to mediate disputes between requestors and responders; and

(d) on an annual basis, electronically transmit a written report to the Government Operations Interim Committee on the work performed by the government records ombudsman during the previous year.

(3) The government records ombudsman may not testify, or be compelled to testify, before the [~~records committee~~] State Records Committee created in Section 63G-2-501, another administrative body, or a court regarding a matter that the government records ombudsman provided services in relation to under this section.

Section 8. Section **63A-12-112** is enacted to read:

63A-12-112. Records Management Committee -- Creation -- Membership -- Administration.

(1) There is created the Records Management Committee composed of the following ~~five~~seven members:

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

(b) the director of the Division of Archives and Records Services or the director's designee; and

(c) ~~three~~five members appointed by the governor as follows:

(i) a member of the Utah State Bar who understands public records keeping under Title 63G, Chapter 2, Government Records Access and Management Act;

(ii) a member with experience in public finance;~~and~~

(iii) an individual from the private sector whose principal professional responsibilities

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are to create or manage records;

(iv) a member representing political subdivisions, recommended by the Utah League of Cities and Towns; and

(v) a member representing the news media.

(2) (a) Except as provided in Subsection (2)(b), the governor shall appoint each member to a four-year term.

(b) Notwithstanding Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of committee members' terms to ensure that the terms of members appointed by the governor are staggered so that approximately half of the committee members appointed by the governor are appointed every two years.

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

(3) When a vacancy occurs in the membership of the committee for any reason, the applicable appointing authority shall appoint a replacement for the unexpired term.

(4) A member of the Records Management Committee may not receive compensation or benefits for the member's service on the committee, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

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

Section 9. Section **63A-12-113** is enacted to read:

63A-12-113. Records Management Committee -- Duties.

(1) The Records Management Committee shall:

(a) appoint a chair from among the committee's members; and

(b) review and determine whether to approve each schedule for the retention and disposal of records, including a proposed schedule submitted to the committee under Section 63G-2-604, within three months after the day on which the proposed schedule is submitted to the committee.

(2) The Records Management Committee may make recommendations to a governmental entity regarding the entity's management of records.

(3) ~~Three~~ Four members of the Records Management Committee are a quorum for

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the transaction of business.

(4) The state archivist shall provide staff and support services for the Records Management Committee.

(5) The Office of the Attorney General shall provide counsel to the Records Management Committee.

Section 10. Section **63G-2-103** is amended to read:

63G-2-103. Definitions.

As used in this chapter:

(1) "Audit" means:

(a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or

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

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

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

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

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

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

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

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

(b) "Computer program" does not mean:

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

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

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

(5) (a) "Contractor" means:

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

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

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

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

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

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

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

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

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

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

(ii) the resultant gaseous pressures are capable of:

(A) producing destructive effects on contiguous objects; or

(B) causing death or serious bodily injury.

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

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

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

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

(iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar administrative units in the judicial branch;

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

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

(b) "Governmental entity" also means:

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

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

(iii) as defined in Section 11-13a-102, a governmental nonprofit corporation;

(iv) an association as defined in Section 53G-7-1101; and

(v) the Utah Independent Redistricting Commission.

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

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

(13) "Individual" means a human being.

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

- (i) the date, time, location, and nature of the complaint, the incident, or offense;
- (ii) names of victims;
- (iii) the nature or general scope of the agency's initial actions taken in response to the incident;
- (iv) the general nature of any injuries or estimate of damages sustained in the incident;
- (v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or
- (vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.

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

(15) "Legislative body" means the Legislature.

(16) "Notice of compliance" means a statement confirming that a governmental entity has complied with [~~a records committee order~~] an order of the State Records Committee.

(17) "Person" means:

- (a) an individual;
- (b) a nonprofit or profit corporation;
- (c) a partnership;
- (d) a sole proprietorship;
- (e) other type of business organization; or
- (f) any combination acting in concert with one another.

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

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

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

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

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

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

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

(b) "Record" does not mean:

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

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

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

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

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

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

(v) proprietary software;

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

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

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

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

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working;

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

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

(A) a member of the judiciary;

(B) an administrative law judge;

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

(D) a member of any other body, other than an association or appeals panel as defined in Section 53G-7-1101, charged by law with performing a quasi-judicial function;

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

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

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

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

(xvi) child pornography, as defined by Section 76-5b-103; or

(xvii) before final disposition of an ethics complaint occurs, a video or audio recording of the closed portion of a meeting or hearing of:

(A) a Senate or House Ethics Committee;

(B) the Independent Legislative Ethics Commission;

(C) the Independent Executive Branch Ethics Commission, created in Section 63A-14-202; or

(D) the Political Subdivisions Ethics Review Commission established in Section 63A-15-201.

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

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

~~[(25)]~~ (24) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

~~[(26)]~~ (25) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.

~~[(27)]~~ (26) "Sponsored research" means research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget:

(a) conducted:

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

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

(b) funded or otherwise supported by an external:

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

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

~~[(28)]~~ (27) "State archives" means the Division of Archives and Records Service created in Section 63A-12-101.

~~[(29)]~~ (28) "State archivist" means the director of the state archives.

(29) "State Records Committee" means the State Records Committee created in Section 63G-2-501.

(30) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

Section 11. Section **63G-2-202** is amended to read:

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

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(1) Except as provided in Subsection (11)(a), a governmental entity:

(a) shall, upon request, disclose a private record to:

(i) the subject of the record;

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

(iii) the legal guardian of a legally incapacitated individual who is the subject of the record;

(iv) any other individual who:

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

(B) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or

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

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

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

(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; and

(b) may disclose a private record described in Subsection 63G-2-302(1)(j) or (k), without complying with Section 63G-2-206, to another governmental entity for a purpose related to:

(i) voter registration; or

(ii) the administration of an election.

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

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

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

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

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

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

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

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

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

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

(a) the person that submitted the record;

(b) any other individual who:

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

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

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

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

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

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

(5) Except as provided in Subsection (1)(b), a governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, state, the United States, or a foreign government only as provided by Section 63G-2-206.

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

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

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(a) the record deals with a matter in controversy over which the court has jurisdiction;
(b) the court has considered the merits of the request for access to the record;
(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:

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

(iii) privacy interests or the public interest in the case of other protected records;
(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access; and

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

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

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

(ii) determines that:

(A) the proposed research is bona fide; and

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

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

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

(iv) prohibits the researcher from:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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abuse, neglect, or dependency.

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

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

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

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

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

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

Section 12. Section **63G-2-309** is amended to read:

63G-2-309. Confidentiality claims.

(1) (a) (i) Any person who provides to a governmental entity a record that the person believes should be protected under Subsection 63G-2-305(1) or (2) or both Subsections 63G-2-305(1) and (2) shall provide with the record:

(A) a written claim of business confidentiality; and

(B) a concise statement of reasons supporting the claim of business confidentiality.

(ii) Any of the following who provides to an institution within the state system of higher education defined in Section 53B-1-102 a record that the person or governmental entity believes should be protected under Subsection 63G-2-305(40)(a)(ii) or (vi) or both Subsections 63G-2-305(40)(a)(ii) and (vi) shall provide the institution within the state system of higher education a written claim of business confidentiality in accordance with Section 53B-16-304:

(A) a person;

(B) a federal governmental entity;

(C) a state governmental entity; or

(D) a local governmental entity.

(b) A person or governmental entity who complies with this Subsection (1) shall be notified by the governmental entity to whom the request for a record is made if:

(i) a record claimed to be protected under one of the following is classified public:

(A) Subsection 63G-2-305(1);

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- (B) Subsection 63G-2-305(2);
- (C) Subsection 63G-2-305(40)(a)(ii);
- (D) Subsection 63G-2-305(40)(a)(vi); or
- (E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D);

or

(ii) the governmental entity to whom the request for a record is made determines that the record claimed to be protected under a provision listed in Subsection (1)(b)(i) should be released after balancing interests under Subsection 63G-2-201(5)(b) or 63G-2-401(6).

(2) (a) Except as provided in Subsection (2)(b) or by court order, the governmental entity to whom the request for a record is made may not disclose a record claimed to be protected under a provision listed in Subsection (1)(b)(i) but which the governmental entity or ~~[records committee]~~ State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal.

(b) ~~[This]~~ Subsection (2)(a) does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the ~~[records committee]~~ State Records Committee.

(3) Disclosure or acquisition of information under this chapter does not constitute misappropriation under Subsection 13-24-2(2).

Section 13. Section **63G-2-400.5** is amended to read:

63G-2-400.5. Definitions.

As used in this part:

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

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

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

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

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

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(6) "Records committee appellant" means:

(a) a political subdivision that seeks to appeal a decision of a local appeals board to the ~~[records committee]~~ State Records Committee; or

(b) a requester or interested party who seeks to appeal to the ~~[records committee]~~ State Records Committee a decision affirming an access denial.

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

Section 14. Section **63G-2-401** is amended to read:

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

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

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

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

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

(2) A notice of appeal shall contain:

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

(b) the relief sought.

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

(4) (a) If the appeal involves a record that is the subject of a business confidentiality

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claim under Section 63G-2-309, the chief administrative officer shall:

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

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

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

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

(i) (A) 10 business days after the chief administrative officer's receipt of the notice of appeal; or

(B) five business days after the chief administrative officer's receipt of the notice of appeal, if the requester or interested party demonstrates that an expedited decision benefits the public rather than the requester or interested party; or

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

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

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

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

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

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the interests favoring access are greater than or equal to the interests favoring restriction of access.

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

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

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

(A) the [~~records committee~~] State Records Committee or district court; or

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

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

(iii) the name and business address of:

(A) the executive secretary of the [~~records committee~~] State Records Committee; and

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

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

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

Section 15. Section **63G-2-402** is amended to read:

63G-2-402. Appealing a decision of a chief administrative officer.

(1) If the decision of the chief administrative officer of a governmental entity under Section 63G-2-401 is to affirm the denial of a record request, the requester may:

(a) (i) appeal the decision to the [~~records committee~~] State Records Committee, as provided in Section 63G-2-403; or

(ii) petition for judicial review of the decision in district court, as provided in Section 63G-2-404; or

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(b) appeal the decision to the local appeals board if:

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

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

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

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

Section 16. Section **63G-2-403** is amended to read:

63G-2-403. Appeals to the State Records Committee.

(1) (a) A records committee appellant appeals to the [~~records committee~~] State Records Committee by filing a notice of appeal with the executive secretary of the [~~records committee~~] State Records Committee no later than 30 days after the date of issuance of the decision being appealed.

(b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the executive secretary of the [~~records committee~~] State Records Committee no later than 45 days after the day on which the record request is made if:

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

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

(2) The notice of appeal shall:

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

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

(c) state the relief sought.

(3) The records committee appellant:

(a) shall, on the day on which the notice of appeal is filed with the [~~records committee~~] State Records Committee, serve a copy of the notice of appeal on:

(i) the governmental entity whose access denial is the subject of the appeal, if the

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records committee appellant is a requester or interested party; or

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

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

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

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

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

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

to:

(A) each member of the [records committee] State Records Committee;

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

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

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

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

(ii) (A) If the executive secretary of the [records committee] State Records Committee

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

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

(c) The executive secretary of the [~~records committee~~] State Records Committee may schedule a hearing on an appeal to the [~~records committee~~] State Records Committee at a regularly scheduled [~~records committee~~] State Records Committee meeting that is later than the period described in Subsection (4)(a)(i) if that [~~records~~] committee meeting is the first regularly scheduled [~~records committee~~] State Records Committee meeting at which there are fewer than 10 appeals scheduled to be heard.

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

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

(6) (a) No later than 10 business days after the day on which the executive secretary sends the notice of appeal [~~is sent by the executive secretary~~], a person whose legal interests may be substantially affected by the proceeding may file a request for intervention [~~before~~] with the [~~records committee~~] State Records Committee.

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

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

(7) The [~~records committee~~] State Records Committee shall hold a hearing within the period of time described in Subsection (4).

(8) At the hearing, the [~~records committee~~] State Records Committee shall allow the

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parties to testify, present evidence, and comment on the issues. The ~~[records]~~ committee may allow other interested persons to comment on the issues.

(9) (a) (i) The ~~[records-committee]~~ State Records Committee:

(A) may review the disputed records; and

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

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

(b) Members of the ~~[records-committee]~~ State Records Committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by this chapter.

(10) (a) Discovery is prohibited, but the ~~[records-committee]~~ State Records Committee may issue subpoenas or other orders to compel production of necessary evidence.

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

(c) (i) The ~~[records-committee's]~~ State Records Committee's review shall be de novo, if the appeal is an appeal from a decision of a chief administrative officer:

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

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

(ii) For an appeal from a decision of a local appeals board, the ~~[records-committee]~~ State Records Committee shall review and consider the decision of the local appeals board.

(11) (a) No later than seven business days after the hearing, the ~~[records-committee]~~ State Records Committee shall issue a signed order:

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

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

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

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

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

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

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

(12) The order of the [~~records committee~~] State Records Committee shall include:

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

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

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

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

(13) If the [~~records committee~~] State Records Committee fails to issue a decision within 73 calendar days of the filing of the notice of appeal, that failure is the equivalent of an order denying the appeal. A records committee appellant shall notify the [~~records committee~~] State Records Committee in writing if the records committee appellant considers the appeal denied.

(14) A party to a proceeding before the [~~records committee~~] State Records Committee may seek judicial review in district court of a [~~records committee~~] State Records Committee order by filing a petition for review of the [~~records committee~~] order as provided in Section 63G-2-404.

(15) (a) Unless a notice of intent to appeal is filed under Subsection (15)(b), each party to the proceeding shall comply with the order of the [~~records committee~~] State Records Committee.

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

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

(i) produce the record; and

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

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

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

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

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

Section 17. Section **63G-2-404** is amended to read:

63G-2-404. Judicial review.

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

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

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

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

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

(b) a copy of the [~~records committee~~] State Records Committee order from which the appeal is taken, if the petitioner is seeking judicial review of an order of the [~~records committee~~] State Records Committee;

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

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

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

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

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

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

(6) (a) The court shall:

(i) make the court's decision de novo, but, for a petition seeking judicial review of a ~~[records committee]~~ State Records Committee order, allow introduction of evidence presented to the ~~[records committee]~~ State Records Committee;

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

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

(b) In a court's review and decision of a petition seeking judicial review of a ~~[records committee]~~ State Records Committee order, the court may not remand the petition to the ~~[records committee]~~ State Records Committee for any additional proceedings.

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

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

Section 18. Section **63G-2-501** is amended to read:

63G-2-501. State Records Committee created -- Membership -- Terms --

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Vacancies -- Expenses.

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

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

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

~~[(c) the governor or the governor's designee;]~~

(b) an individual with experience with electronic records and databases, as recommended by a statewide technology advocacy organization that represents the public, private, and nonprofit sectors;

(c) the director of the Division of Archives and Records Services or the director's designee;

(d) two citizen members;

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

(f) one individual representing the news media.

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

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

(b) Notwithstanding [~~the requirements of~~] Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

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

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

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

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- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance [~~pursuant to~~] under Sections 63A-3-106 and 63A-3-107.

Section 19. Section **63G-2-502** is amended to read:

63G-2-502. State Records Committee -- Duties.

- (1) The [~~records committee~~] State Records Committee shall:
 - ~~[(a) meet at least once every three months;]~~
 - ~~[(b) review and approve schedules for the retention and disposal of records;]~~
 - ~~[(c)]~~ (a) hear appeals from determinations of access [~~as provided by~~] under Section 63G-2-403;
 - ~~[(d)]~~ (b) determine disputes submitted by the state auditor under Subsection 67-3-1(17)(d); and
 - ~~[(e)]~~ (c) appoint a [~~chairman~~] chair from among [~~its~~] the committee's members.
- (2) The [~~records committee~~] State Records Committee may:
 - (a) make rules [~~to govern its own proceedings as provided by~~], in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern the committee's proceedings; and
 - (b) by order, after notice and hearing, reassign classification and designation for any record series by a governmental entity if the governmental entity's classification or designation is inconsistent with this chapter.
- (3) (a) The [~~records committee~~] State Records Committee shall annually appoint an executive secretary to provide administrative support to the [~~records~~] committee.
 - (b) The executive secretary [~~may not serve as~~] is not a voting member of the committee.
- (4) Five members of the [~~records committee~~] State Records Committee are a quorum for the transaction of business.
- (5) The state archives shall provide staff and support services for the [~~records committee~~] State Records Committee.
- (6) If the [~~records committee~~] State Records Committee reassigns the classification or designation of a record or record series under Subsection (2)(b), any affected governmental

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entity or any other interested person may appeal the reclassification or redesignation to the district court. The district court shall hear the matter de novo.

(7) The Office of the Attorney General shall provide counsel to the ~~[records committee and shall review proposed retention schedules]~~ State Records Committee.

Section 20. Section **63G-2-604** is amended to read:

63G-2-604. Retention and disposition of records.

(1) (a) Except for a governmental entity that is permitted to maintain ~~[its]~~ the governmental entity's own retention schedules under Part 7, Applicability to Political Subdivisions, the Judiciary, and the Legislature, each governmental entity shall file with the ~~[State Records Committee]~~ Records Management Committee created in Section 63A-12-112 a proposed schedule for the retention and disposition of each type of material that is defined as a record under this chapter.

(b) After a retention schedule is reviewed and approved by the ~~[State Records Committee]~~ Records Management Committee under Subsection ~~[63G-2-502(1)(b)]~~ 63A-12-113(1)(b), the governmental entity shall maintain and destroy records in accordance with the retention schedule.

(c) If a governmental entity subject to the provisions of this section has not received an approved retention schedule from the Records Management Committee for a specific type of material that is classified as a record under this chapter, the model retention schedule maintained by the state archivist shall govern the retention and destruction of that type of material.

(2) A retention schedule that is filed with or approved by the ~~[State Records Committee]~~ Records Management Committee under the requirements of this section is a public record.

Section 21. Section **63G-2-701** is amended to read:

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) two of whom shall be members of the public who are not employed by or officials of a governmental entity, at least one of whom shall have professional experience with requesting or managing records.

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

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

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

(i) to the [~~records committee~~] State Records Committee, as provided in Section 63G-2-403; or

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

(b) The contents of a petition for judicial review under Subsection (6)(a)(ii) and the

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conduct of the proceeding shall be in accordance with Sections 63G-2-402 and 63G-2-404.

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

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

Section 22. Section **63G-2-801** is amended to read:

63G-2-801. Criminal penalties.

(1) (a) A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses, provides a copy of, or improperly uses a private, controlled, or protected record knowing that the disclosure or use is prohibited under this chapter, is, except as provided in Subsection 53-5-708(1)(c), guilty of a class B misdemeanor.

(b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released private, controlled, or protected information in the reasonable belief that the use or disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.

(c) It is a defense to prosecution under Subsection (1)(a) that the record could have lawfully been released to the recipient if it had been properly classified.

(d) It is a defense to prosecution under Subsection (1)(a) that the public employee or other person disclosed, provided, or used the record based on a good faith belief that the disclosure, provision, or use was in accordance with the law.

(2) (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any private, controlled, or protected record to which the person is not legally entitled is guilty of a class B misdemeanor.

(b) No person shall be guilty under Subsection (2)(a) who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

(3) (a) A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by law, is guilty of a class B misdemeanor.

(b) It is a defense to prosecution under Subsection (3)(a) that the public employee's

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failure to release the record was based on a good faith belief that the public employee was acting in accordance with the requirements of law.

(c) A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by a final unappealed order from a government entity, the [~~records committee~~] State Records Committee, or a court is guilty of a class B misdemeanor.