

SB0108S01 compared with SB0108

~~deleted text~~ shows text that was in SB0108 but was deleted in SB0108S01.

Inserted text shows text that was not in SB0108 but was inserted into SB0108S01.

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Senator Wayne A. Harper proposes the following substitute bill:

MODIFICATIONS TO GOVERNMENT RECORDS

PROVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of the Government Records Access and Management Act.

Highlighted Provisions:

This bill:

- ▶ modifies the right to inspect and copy records;
- ▶ modifies a provision that states that a governmental entity is not required to fill a records request if the records are already publicly available;
- ▶ modifies a restriction on sharing records of a publicly funded library;
- ▶ prohibits a records request from being submitted to multiple governmental entities;
- ▶ modifies a provision relating to an award of attorney fees on an appeal relating to an

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access issue; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-2-201, as last amended by Laws of Utah 2017, Chapter 435

63G-2-204, as last amended by Laws of Utah 2017, Chapter 435

63G-2-206, as last amended by Laws of Utah 2012, Chapter 377

63G-2-308, as renumbered and amended by Laws of Utah 2008, Chapter 382

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-2-802, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section **63G-2-201** is amended to read:

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

(1) (a) ~~[Every]~~ Except as provided in Subsection (1)(b), a person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and 63G-2-204.

(b) A right under Subsection (1)(a) does not apply with respect to a record:

(i) a copy of which the governmental entity has already provided to the person;

(ii) that is the subject of a records request that the governmental entity is not required to fill under Subsection (8)(e); or

(iii) (A) that is accessible only by a computer or other electronic device owned or controlled by the governmental entity;

(B) that is part of an electronic file that also contains a record that is private, controlled, or protected; and

(C) that the governmental entity cannot readily ~~separate~~ segregate from the part of the

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electronic file that contains a private, controlled, or protected record.

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

(3) The following records are not public:

(a) a record that is private, controlled, or protected under Sections 63G-2-302, 63G-2-303, 63G-2-304, and 63G-2-305; and

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

(4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or 63G-2-305 may be classified private, controlled, or protected.

(5) (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section 63G-2-202, 63G-2-206, or 63G-2-303.

(b) A governmental entity may disclose a record that is private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee, determines that:

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

(ii) the interests favoring access are greater than or equal to the interest favoring restriction of access.

(c) In addition to the disclosure under Subsection (5)(b), a governmental entity may disclose a record that is protected under Subsection 63G-2-305(51) if:

(i) the head of the governmental entity, or a designee, determines that the disclosure:

(A) is mutually beneficial to:

(I) the subject of the record;

(II) the governmental entity; and

(III) the public; and

(B) serves a public purpose related to:

(I) public safety; or

(II) consumer protection; and

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(ii) the person who receives the record from the governmental entity agrees not to use or allow the use of the record for advertising or solicitation purposes.

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

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

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

- (a) the person requesting the record has a right to inspect it;
- (b) the person identifies the record with reasonable specificity; and
- (c) the person pays the lawful fees.

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

- ~~(i)~~ (a) create a record;
- ~~(ii)~~ (b) compile, format, manipulate, package, summarize, or tailor information;
- ~~(iii)~~ (c) provide a record in a particular format, medium, or program not currently

maintained by the governmental entity;

~~(iv)~~ (d) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or

~~(v)~~ (e) fill a person's records request if:

~~(A)~~ (i) the record requested is:

(A) publicly accessible [in the identical physical form and content] online; or

(B) included in a public publication or product produced by the governmental entity receiving the request; and

~~(B)~~ (ii) the governmental entity:

(A) specifies to the person requesting the record where the record is accessible online;

or

(B) provides the person requesting the record with the public publication or product[;] and ~~(C) the governmental entity~~ specifies where the record can be found in the public publication or product.

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~~[(b) Upon request,]~~

(9) (a) Although not required to do so, a governmental entity may, upon request from the person who submitted the records request, compile, format, manipulate, package, summarize, or tailor information or provide a record in a [particular form under Subsection (8)(a)(ii) or (iii) if:] format, medium, or program not currently maintained by the governmental entity.

~~[(i) the]~~ (b) In determining whether to fulfill a request described in Subsection (9)(a), a governmental entity [determines it is able to do so] may consider whether the governmental entity is able to fulfill the request without unreasonably interfering with the governmental entity's duties and responsibilities[; and].

~~[(ii) the requester agrees]~~

(c) A governmental entity may require a person who makes a request under Subsection (9)(a) to pay the governmental entity, in accordance with Section 63G-2-203, for providing the information or record [in the requested form in accordance with Section 63G-2-203] as requested.

~~[(9)]~~ (10) (a) Notwithstanding any other provision of this chapter, and subject to Subsection [(9)] (10)(b), a governmental entity is not required to respond to, or provide a record in response to, a record request if the request is submitted by or in behalf of an individual who is confined in a jail or other correctional facility following the individual's conviction.

(b) Subsection ~~[(9)]~~ (10)(a) does not apply to:

(i) the first five record requests submitted to the governmental entity by or in behalf of an individual described in Subsection ~~[(9)]~~ (10)(a) during any calendar year requesting only a record that contains a specific reference to the individual; or

(ii) a record request that is submitted by an attorney of an individual described in Subsection ~~[(9)]~~ (10)(a).

~~[(10)]~~ (11) (a) A governmental entity may allow a person requesting more than 50 pages of records to copy the records if:

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

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

(b) If the requirements of Subsection ~~[(10)]~~ (11)(a) are met, the governmental entity may:

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

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

~~[(11)]~~ (12) (a) A governmental entity that owns an intellectual property right and that offers the intellectual property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to be in the public interest.

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

~~[(12)]~~ (13) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this chapter.

~~[(13)]~~ (14) Subject to the requirements of Subsection (8), a governmental entity shall provide access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

(a) the person making the request requests or states a preference for an electronic copy;

(b) the governmental entity currently maintains the record in an electronic format that is reproducible and may be provided without reformatting or conversion; and

(c) the electronic copy of the record:

(i) does not disclose other records that are exempt from disclosure; or

(ii) may be segregated to protect private, protected, or controlled information from disclosure without the undue expenditure of public resources or funds.

~~[(14)]~~ (15) In determining whether a record is properly classified as private under Subsection 63G-2-302(2)(d), the governmental entity, State Records Committee, local appeals

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board, or court shall consider and weigh:

(a) any personal privacy interests, including those in images, that would be affected by disclosure of the records in question; and

(b) any public interests served by disclosure.

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

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

(1) ~~(a)~~ A person making a request for a record shall ~~[furnish]~~ submit to the governmental entity ~~[with]~~ that possesses the record a written request containing:

~~[(a)]~~ (i) the person's:

~~(A)~~ name~~[-];~~

~~(B)~~ mailing address~~[-];~~

~~(C)~~ email address, if the person has an email address and is willing to accept communications by email relating to the person's records request; and

~~(D)~~ daytime telephone number~~[-if available];~~ and

~~[(b)]~~ (ii) a description of the record requested that identifies the record with reasonable specificity.

~~[(2)(a)]~~ Subject to Subsection (2)(b), a person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record.]

~~(b)~~ (i) A single record request may not be submitted to multiple governmental entities.

~~(ii)~~ Subsection (1)(b)(i) may not be construed to prevent a person from submitting a separate record request to each of multiple governmental entities, even if each of the separate requests seeks access to the same record.

~~[(b)]~~ ~~(2)~~ (a) In response to a request for a record, a governmental entity may not provide a record that it has received under Section 63G-2-206 as a shared record if:

~~(i)~~ the record was shared for the purpose of auditing~~[-if];~~ and

~~(ii)~~ the governmental entity is authorized by state statute to conduct an audit.

~~[(c)]~~ (b) If a governmental entity is prohibited from providing a record under Subsection ~~[(2)(b), it]~~ (2)(a), the governmental entity shall:

(i) deny the records request; and

(ii) inform the person making the request ~~[that records requests must be submitted to the governmental entity that prepares, owns, or retains the record]~~ of the identity of the

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governmental entity from which the shared record was received.

~~[(d)]~~ (3) A governmental entity may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.

~~[(3)]~~ (4) After receiving a request for a record, a governmental entity shall:

(a) review each request that seeks an expedited response and notify, within five business days after receiving the request, each requester that has not demonstrated that their record request benefits the public rather than the person that their response will not be expedited; and

(b) as soon as reasonably possible, but no later than 10 business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person:

(i) approve the request and provide a copy of the record;

(ii) deny the request in accordance with the procedures and requirements of Section 63G-2-205;

(iii) notify the requester that it does not maintain the record requested and provide, if known, the name and address of the governmental entity that does maintain the record; or

(iv) notify the requester that because of one of the extraordinary circumstances listed in Subsection ~~[(5)]~~ (6), it cannot immediately approve or deny the request, and include with the notice:

(A) a description of the circumstances that constitute the extraordinary circumstances; and

(B) the date when the records will be available, consistent with the requirements of Subsection ~~[(6)]~~ (7).

~~[(4)]~~ (5) Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.

~~[(5)]~~ (6) The following circumstances constitute "extraordinary circumstances" that allow a governmental entity to delay approval or denial by an additional period of time as specified in Subsection ~~[(6)]~~ (7) if the governmental entity determines that due to the

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extraordinary circumstances it cannot respond within the time limits provided in Subsection ~~[(3)]~~ (4):

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

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

(c) (i) the request is for a voluminous quantity of records or a record series containing a substantial number of records; or

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

(d) the governmental entity is currently processing a large number of records requests;

(e) the request requires the governmental entity to review a large number of records to locate the records requested;

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

(g) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or

(h) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.

~~[(6)]~~ (7) If one of the extraordinary circumstances listed in Subsection ~~[(5)]~~ (6) precludes approval or denial within the time specified in Subsection ~~[(3)]~~ (4), the following time limits apply to the extraordinary circumstances:

(a) for claims under Subsection ~~[(5)]~~ (6)(a), the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work;

(b) for claims under Subsection ~~[(5)]~~ (6)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;

(c) for claims under Subsections ~~[(5)]~~ (6)(c), (d), and (e), the governmental entity shall:

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

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

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

(iv) for any person that does not establish a right to an expedited response as authorized by Subsection [~~(3)~~] (4), a governmental entity may choose to:

(A) require the person to provide for copying of the records as provided in Subsection 63G-2-201(10); or

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

(d) for claims under Subsection [~~(5)~~] (6)(f), the governmental entity shall either approve or deny the request within five business days after the response time specified for the original request has expired;

(e) for claims under Subsection [~~(5)~~] (6)(g), the governmental entity shall fulfill the request within 15 business days from the date of the original request; or

(f) for claims under Subsection [~~(5)~~] (6)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.

[~~(7)~~] (8) (a) If a request for access is submitted to an office of a governmental entity other than that specified by rule in accordance with Subsection [~~(2)~~] (3), the office shall promptly forward the request to the appropriate office.

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

[~~(8)~~] (9) If the governmental entity fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the record.

Section 3. Section 63G-2-206 is amended to read:

63G-2-206. Sharing records.

(1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:

(a) serves as a repository or archives for purposes of historical preservation,

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administrative maintenance, or destruction;

(b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;

(c) is authorized by state statute to conduct an audit and the record is needed for that purpose;

(d) is one that collects information for presentence, probationary, or parole purposes; or

(e) (i) is:

(A) the Legislature;

(B) a legislative committee;

(C) a member of the Legislature; or

(D) a legislative staff member acting at the request of the Legislature, a legislative committee, or a member of the Legislature; and

(ii) requests the record in relation to the Legislature's duties including:

(A) the preparation or review of a legislative proposal or legislation;

(B) appropriations; or

(C) an investigation or review conducted by the Legislature or a legislative committee.

(2) (a) A governmental entity may provide a private, controlled, or protected record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:

(i) that the record or record series is necessary to the performance of the governmental entity's duties and functions;

(ii) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and

(iii) that the use of the record or record series produces a public benefit that is greater than or equal to the individual privacy right that protects the record or record series.

(b) A governmental entity may provide a private, controlled, or protected record or record series to a contractor or a private provider according to the requirements of Subsection (6)(b).

(3) (a) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the

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federal government, or another state if the requesting entity:

(i) is entitled by law to inspect the record;

(ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or

(iii) is an entity described in Subsection (1)(a), (b), (c), (d), or (e).

(b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection 63G-2-305(4).

(4) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, a foreign government, or to a contractor or private provider, the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

(5) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1) and (2) without complying with the procedures of Subsection (2) or (4) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

(6) (a) Subject to Subsections (6)(b) and (c), an entity receiving a record under this section is subject to the same restrictions on disclosure of the record as the originating entity.

(b) A contractor or a private provider may receive information under this section only if:

(i) the contractor or private provider's use of the record or record series produces a public benefit that is greater than or equal to the individual privacy right that protects the record or record series;

(ii) the record or record series it requests:

(A) is necessary for the performance of a contract with a governmental entity;

(B) will only be used for the performance of the contract with the governmental entity;

(C) will not be disclosed to any other person; and

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(D) will not be used for advertising or solicitation purposes; and

(iii) the contractor or private provider gives written assurance to the governmental entity that is providing the record or record series that it will adhere to the restrictions of this Subsection (6)(b).

(c) The classification of a record already held by a governmental entity and the applicable restrictions on disclosure of that record are not affected by the governmental entity's receipt under this section of a record with a different classification that contains information that is also included in the previously held record.

(7) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.

(8) (a) The following records may not be shared under this section:

(a) (i) records held by the Division of Oil, Gas, and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining;

(b) (ii) except as provided in Subsection (8)(b), records of publicly funded libraries as described in Subsection 63G-2-302(1)(c); and

(c) (iii) a record described in Section 63G-12-210.

(b) A publicly funded library may share a record that is a private record under Subsection 63G-2-302(1)(c) with a law enforcement agency, as defined in Section 53-1-102, if:

(i) the record is a video surveillance recording of the library premises; and

(ii) the law enforcement agency certifies in writing that:

(A) the law enforcement agency believes that the record will provide important information for a pending investigation into criminal or potentially criminal behavior; and

(B) the law enforcement agency's receipt of the record will assist the agency to prevent imminent harm to an individual or imminent and substantial damage to property.

(9) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

Section ~~33~~4. Section **63G-2-308** is amended to read:

63G-2-308. Segregation of records.

Notwithstanding any other provision in this chapter, if a governmental entity receives a

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request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect under this chapter, and, if the information the requester is entitled to inspect is intelligible, the governmental entity:

- (1) shall, except as provided in Subsection 63G-2-201(1)(b)(iii), allow access to information in the record that the requester is entitled to inspect under this chapter; and
- (2) may deny access to information in the record if the information is exempt from disclosure to the requester, issuing a notice of denial as provided in Section 63G-2-205.

Section ~~{4}~~5. 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)]~~(9) or Section 63G-2-205, in whole or in part, of a record request.
- (2) "Appellate affirmation" means a decision of a chief administrative officer, local appeals board, or records committee affirming an access denial.
- (3) "Interested party" means a person, other than a requester, who is aggrieved by an access denial or an appellate affirmation, whether or not the person participated in proceedings leading to the access denial or appellate affirmation.
- (4) "Local appeals board" means an appeals board established by a political subdivision under Subsection 63G-2-701(5)(c).
- (5) "Record request" means a request for a record under Section 63G-2-204.
- (6) "Records committee appellant" means:
 - (a) a political subdivision that seeks to appeal a decision of a local appeals board to the records committee; or
 - (b) a requester or interested party who seeks to appeal to the records committee a decision affirming an access denial.
- (7) "Requester" means a person who submits a record request to a governmental entity.

Section ~~{5}~~6. 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

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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)]~~(9), 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)]~~(4), 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)]~~(9).

(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 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:

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(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 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 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;

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

(iii) the name and business address of:

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

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

(8) A person aggrieved by a governmental entity's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the 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 7. Section 63G-2-802 is amended to read:

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

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

(2) (a) A district court may assess against any governmental entity or political subdivision reasonable attorney fees and other litigation costs reasonably incurred in connection with a judicial appeal [of a denial of] to determine whether a requester is entitled to access to records under a records request, if the requester substantially prevails.

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

(i) the public benefit derived from the case;

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

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

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

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

(4) Notwithstanding Subsection (2), a court may only award fees and costs incurred in

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connection with appeals to district courts under Subsection 63G-2-404(2) if the fees and costs were incurred 20 or more days after the requester provided to the governmental entity or political subdivision a statement of position that adequately explains the basis for the requester's position.

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