

1 **GOVERNMENT RECORDS OMBUDSMAN AMENDMENTS**

2 2023 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Anthony E. Loubet**

5 Senate Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to government records.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ modifies a provision relating to government records ombudsman mediation of
13 disputes between requesters and responders;

14 ▶ requires the government records ombudsman to certify the conclusion of certain
15 mediations;

16 ▶ requires a notice of access denial to include a statement relating to the requester's
17 right to request mediation; and

18 ▶ suspends a requester's time to file a notice of appeal for a specified period of time if
19 the requester has requested mediation.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **63A-12-111**, as last amended by Laws of Utah 2019, Chapter 254

27 **63G-2-203**, as last amended by Laws of Utah 2022, Chapter 128



28 **63G-2-205**, as renumbered and amended by Laws of Utah 2008, Chapter 382

29 **63G-2-401**, as last amended by Laws of Utah 2019, Chapters 254 and 334

30 **63G-2-403**, as last amended by Laws of Utah 2019, Chapter 254

31

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

33 Section 1. Section **63A-12-111** is amended to read:

34 **63A-12-111. Government records ombudsman.**

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

36 (b) The government records ombudsman may not be a member of the State Records
37 Committee created in Section **63G-2-501**.

38 (2) The government records ombudsman shall:

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

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

43 [~~(c) upon request, attempt to mediate disputes between requestors and responders; and]~~

44 (c) upon a request from a requester or responder, and with the consent of both the
45 requester and responder, mediate a dispute between a requester and responder, including a
46 dispute between a requester and a governmental entity regarding the governmental entity's
47 access denial, as defined in Section **63G-2-400.5**; and

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

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

55 (4) Upon the conclusion of a mediation under Subsection (2)(c) or when the
56 government records ombudsman concludes that the required consent for the mediation is
57 lacking, the government records ombudsman shall:

58 (a) certify in writing that the mediation:

- 59 (i) did not take place because of a lack of the required consent; or
- 60 (ii) is concluded; and
- 61 (b) provide a copy of the written certification to the requester and the responder.

62 Section 2. Section **63G-2-203** is amended to read:

63 **63G-2-203. Fees.**

64 (1) (a) Subject to Subsection (5), a governmental entity may charge a reasonable fee to
65 cover the governmental entity's actual cost of providing a record.

66 (b) A fee under Subsection (1)(a) shall be approved by the governmental entity's
67 executive officer.

68 (2) (a) When a governmental entity compiles a record in a form other than that
69 normally maintained by the governmental entity, the actual costs under this section may include
70 the following:

71 (i) the cost of staff time for compiling, formatting, manipulating, packaging,
72 summarizing, or tailoring the record either into an organization or media to meet the person's
73 request;

74 (ii) the cost of staff time for search, retrieval, and other direct administrative costs for
75 complying with a request; and

76 (iii) in the case of fees for a record that is the result of computer output other than word
77 processing, the actual incremental cost of providing the electronic services and products
78 together with a reasonable portion of the costs associated with formatting or interfacing the
79 information for particular users, and the administrative costs as set forth in Subsections
80 (2)(a)(i) and (ii).

81 (b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest
82 paid employee who, in the discretion of the custodian of records, has the necessary skill and
83 training to perform the request.

84 (3) (a) Fees shall be established as provided in this Subsection (3).

85 (b) A governmental entity with fees established by the Legislature:

86 (i) shall establish the fees defined in Subsection (2), or other actual costs associated
87 with this section through the budget process; and

88 (ii) may use the procedures of Section [63J-1-504](#) to set fees until the Legislature
89 establishes fees through the budget process.

90 (c) Political subdivisions shall establish fees by ordinance or written formal policy
91 adopted by the governing body.

92 (d) The judiciary shall establish fees by rules of the judicial council.

93 (4) A governmental entity may fulfill a record request without charge and is
94 encouraged to do so if it determines that:

95 (a) releasing the record primarily benefits the public rather than a person;

96 (b) the individual requesting the record is the subject of the record, or an individual
97 specified in Subsection 63G-2-202(1) or (2); or

98 (c) the requester's legal rights are directly implicated by the information in the record,
99 and the requester is impecunious.

100 (5) (a) As used in this Subsection (5), "media representative":

101 (i) means a person who requests a record to obtain information for a story or report for
102 publication or broadcast to the general public; and

103 (ii) does not include a person who requests a record to obtain information for a blog,
104 podcast, social media account, or other means of mass communication generally available to a
105 member of the public.

106 (b) A governmental entity may not charge a fee for:

107 (i) reviewing a record to determine whether it is subject to disclosure, except as
108 permitted by Subsection (2)(a)(ii);

109 (ii) inspecting a record; or

110 (iii) the first quarter hour of staff time spent in responding to a request under Section
111 63G-2-204.

112 (c) Notwithstanding Subsection (5)(b)(iii), a governmental entity is not prevented from
113 charging a fee for the first quarter hour of staff time spent in responding to a request under
114 Section 63G-2-204 if the person who submits the request:

115 (i) is not a Utah media representative; and

116 (ii) previously submitted a separate request within the 10-day period immediately
117 before the date of the request to which the governmental entity is responding.

118 (6) (a) A person who believes that there has been an unreasonable denial of a fee
119 waiver under Subsection (4) may:

120 (i) seek mediation of the fee dispute under Subsection 63A-12-111(2)(c); and

121 (ii) appeal the denial in the same manner as a person appeals when inspection of a
122 public record is denied under Section 63G-2-205.

123 (b) The adjudicative body hearing ~~the~~ an appeal under Subsection (6)(a)(ii):

124 (i) shall review the fee waiver de novo, but shall review and consider the governmental
125 entity's denial of the fee waiver and any determination under Subsection (4); and

126 (ii) has the same authority when a fee waiver or reduction is denied as it has when the
127 inspection of a public record is denied.

128 (7) (a) All fees received under this section by a governmental entity subject to
129 Subsection (3)(b) shall be retained by the governmental entity as a dedicated credit.

130 (b) Those funds shall be used to recover the actual cost and expenses incurred by the
131 governmental entity in providing the requested record or record series.

132 (8) (a) A governmental entity may require payment of past fees and future estimated
133 fees before beginning to process a request if:

134 (i) fees are expected to exceed \$50; or

135 (ii) the requester has not paid fees from previous requests.

136 (b) Any prepaid amount in excess of fees due shall be returned to the requester.

137 (9) This section does not alter, repeal, or reduce fees established by other statutes or
138 legislative acts.

139 (10) (a) Notwithstanding Subsection (3)(c), fees for voter registration records shall be
140 set as provided in this Subsection (10).

141 (b) The lieutenant governor shall:

142 (i) after consultation with county clerks, establish uniform fees for voter registration
143 and voter history records that meet the requirements of this section; and

144 (ii) obtain legislative approval of those fees by following the procedures and
145 requirements of Section 63J-1-504.

146 Section 3. Section 63G-2-205 is amended to read:

147 **63G-2-205. Denials.**

148 (1) If ~~the~~ a governmental entity denies ~~the~~ a record request, in whole or part, ~~it~~ the
149 governmental entity shall provide a notice of denial to the requester either in person or by
150 sending the notice to the requester's address.

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

152 (a) a description of the record or portions of the record to which access was denied,
153 provided that the description does not disclose private, controlled, or protected information or
154 information exempt from disclosure under Subsection [63G-2-201\(3\)\(b\)](#);

155 (b) citations to the provisions of this chapter, court rule or order, another state statute,
156 federal statute, or federal regulation that exempt the record or portions of the record from
157 disclosure, provided that the citations do not disclose private, controlled, or protected
158 information or information exempt from disclosure under Subsection [63G-2-201\(3\)\(b\)](#);

159 (c) (i) a statement that the requester has the right to appeal the denial to the chief
160 administrative officer of the governmental entity; and

161 [~~(d)~~] (ii) the time limits for filing an appeal, and the name and business address of the
162 chief administrative officer of the governmental entity[-]; and

163 (d) a statement that the requester has a right under Section [63A-12-111](#) to request the
164 government records ombudsman to mediate the dispute between the requester and the
165 governmental entity.

166 (3) Unless otherwise required by a court or agency of competent jurisdiction, a
167 governmental entity may not destroy or give up custody of any record to which access was
168 denied until the period for an appeal has expired or the end of the appeals process, including
169 judicial appeal.

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

171 **63G-2-401. Appeal to chief administrative officer -- Notice of the decision of the**
172 **appeal.**

173 (1) (a) A requester or interested party may appeal an access denial or the denial of a fee
174 waiver under Subsection [63G-2-203\(4\)](#) to the chief administrative officer of the governmental
175 entity by filing a notice of appeal with the chief administrative officer within 30 days after:

176 (i) for an access denial:

177 (A) the governmental entity sends a notice of denial under Section [63G-2-205](#), if the
178 governmental entity denies a record request under Subsection [63G-2-205\(1\)](#); or

179 [~~(ii)~~] (B) the record request is considered denied under Subsection [63G-2-204\(9\)](#), if
180 that subsection applies[-]; or

181 (ii) for a denial of a fee waiver, the date the governmental entity notifies the requester
182 that the fee waiver is denied.

183 **(b) The time for a requester to file a notice of appeal under Subsection (1)(a) is**
184 **suspended for the period of time that:**

185 **(i) begins the date the requester submits a request under Section [63A-12-111](#) for the**
186 **government records ombudsman to mediate the dispute between the requester and the**
187 **governmental entity; and**

188 **(ii) ends the earliest of the following dates:**

189 **(A) the date that the government records ombudsman certifies in writing that the**
190 **mediation did not occur because of a lack of consent to the mediation;**

191 **(B) the date that the government records ombudsman certifies in writing that the**
192 **mediation is concluded; and**

193 **(C) the date that is 30 days after the date described in Subsection (1)(b)(i).**

194 **[~~(b)~~] (c) If a governmental entity claims extraordinary circumstances and specifies the**
195 **date when the records will be available under Subsection [63G-2-204](#)(4), and, if the requester**
196 **believes the extraordinary circumstances do not exist or that the date specified is unreasonable,**
197 **the requester may appeal the governmental entity's claim of extraordinary circumstances or date**
198 **for compliance to the chief administrative officer by filing a notice of appeal with the chief**
199 **administrative officer within 30 days after notification of a claim of extraordinary**
200 **circumstances by the governmental entity, despite the lack of a "determination" or its**
201 **equivalent under Subsection [63G-2-204](#)(9).**

202 **(2) A notice of appeal shall contain:**

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

205 **(b) the relief sought.**

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

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

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

213 **(ii) send notice of the business confidentiality claim and the schedule for the chief**

214 administrative officer's determination to the requester or interested party within three business
215 days after receiving notice of the appeal.

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

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

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

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

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

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

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

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

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

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

244 (b) If the chief administrative officer's decision is to affirm the access denial in whole

245 or in part, the notice under Subsection (7)(a) shall include:

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

248 (A) the State Records Committee or district court; or

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

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

252 (iii) the name and business address of:

253 (A) the executive secretary of the State Records Committee; and

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

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

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

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

264 **63G-2-403. Appeals to the State Records Committee.**

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

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

271 (i) the circumstances described in Subsection 63G-2-401(1)(~~tb~~)(c) occur; and

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

273 (2) The notice of appeal shall:

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

276 (b) be accompanied by a copy of the decision being appealed; and
277 (c) state the relief sought.
278 (3) The records committee appellant:
279 (a) shall, on the day on which the notice of appeal is filed with the State Records
280 Committee, serve a copy of the notice of appeal on:
281 (i) the governmental entity whose access denial is the subject of the appeal, if the
282 records committee appellant is a requester or interested party; or
283 (ii) the requester or interested party who is a party to the local appeals board
284 proceeding that resulted in the decision that the political subdivision is appealing to the
285 committee, if the records committee appellant is a political subdivision; and
286 (b) may file a short statement of facts, reasons, and legal authority in support of the
287 appeal.
288 (4) (a) Except as provided in Subsections (4)(b) and (c), no later than seven business
289 days after receiving a notice of appeal, the executive secretary of the State Records Committee
290 shall:
291 (i) schedule a hearing for the State Records Committee to discuss the appeal at the next
292 regularly scheduled committee meeting falling at least 16 days after the date the notice of
293 appeal is filed but no longer than 64 calendar days after the date the notice of appeal was filed
294 except that the committee may schedule an expedited hearing upon application of the records
295 committee appellant and good cause shown;
296 (ii) send a copy of the notice of hearing to the records committee appellant; and
297 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing
298 to:
299 (A) each member of the State Records Committee;
300 (B) the records officer and the chief administrative officer of the governmental entity
301 whose access denial is the subject of the appeal, if the records committee appellant is a
302 requester or interested party;
303 (C) any person who made a business confidentiality claim under Section [63G-2-309](#) for
304 a record that is the subject of the appeal; and
305 (D) all persons who participated in the proceedings before the governmental entity's
306 chief administrative officer, if the appeal is of the chief administrative officer's decision

307 affirming an access denial.

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

312 (ii) (A) If the executive secretary of the State Records Committee declines to schedule
313 a hearing, the executive secretary shall send a notice to the records committee appellant
314 indicating that the request for hearing has been denied and the reason for the denial.

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

317 (c) The executive secretary of the State Records Committee may schedule a hearing on
318 an appeal to the State Records Committee at a regularly scheduled State Records Committee
319 meeting that is later than the period described in Subsection (4)(a)(i) if that committee meeting
320 is the first regularly scheduled State Records Committee meeting at which there are fewer than
321 10 appeals scheduled to be heard.

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

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

329 (6) (a) No later than 10 business days after the day on which the executive secretary
330 sends the notice of appeal, a person whose legal interests may be substantially affected by the
331 proceeding may file a request for intervention with the State Records Committee.

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

334 (c) The person seeking intervention shall provide copies of the statement described in
335 Subsection (6)(b) to all parties to the proceedings before the State Records Committee.

336 (7) The State Records Committee shall hold a hearing within the period of time
337 described in Subsection (4).

338 (8) At the hearing, the State Records Committee shall allow the parties to testify,
339 present evidence, and comment on the issues. The committee may allow other interested
340 persons to comment on the issues.

341 (9) (a) (i) The State Records Committee:

342 (A) may review the disputed records; and

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

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

346 (b) Members of the State Records Committee may not disclose any information or
347 record reviewed by the committee in camera unless the disclosure is otherwise authorized by
348 this chapter.

349 (10) (a) Discovery is prohibited, but the State Records Committee may issue subpoenas
350 or other orders to compel production of necessary evidence.

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

354 (c) (i) The State Records Committee's review shall be de novo, if the appeal is an
355 appeal from a decision of a chief administrative officer:

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

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

359 (ii) For an appeal from a decision of a local appeals board, the State Records
360 Committee shall review and consider the decision of the local appeals board.

361 (11) (a) No later than seven business days after the hearing, the State Records
362 Committee shall issue a signed order:

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

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

365 (b) Except as provided in Section 63G-2-406, the State Records Committee may, upon
366 consideration and weighing of the various interests and public policies pertinent to the
367 classification and disclosure or nondisclosure, order the disclosure of information properly
368 classified as private, controlled, or protected if the public interest favoring access is greater

369 than or equal to the interest favoring restriction of access.

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

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

374 (ii) business confidentiality interests in the case of a record protected under Subsection
375 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

377 (12) The order of the State Records Committee shall include:

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

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

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

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

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

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

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

398 (b) If a party disagrees with the order of the State Records Committee, that party may
399 file a notice of intent to appeal the order.

400 (c) If the State Records Committee orders the governmental entity to produce a record
401 and no appeal is filed, or if, as a result of the appeal, the governmental entity is required to
402 produce a record, the governmental entity shall:

403 (i) produce the record; and

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

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

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

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

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