

## SB0231S03 compared with SB0231

~~text~~ shows text that was in SB0231 but was deleted in SB0231S03.

text shows text that was not in SB0231 but was inserted into SB0231S03.

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Senator Curtis S. Bramble proposes the following substitute bill:

### GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT

#### AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: ~~\_\_\_\_\_~~ Anthony E. Loubet

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#### LONG TITLE

##### General Description:

This bill makes changes related to the Government Records Access and Management Act (act).

##### Highlighted Provisions:

This bill:

- ▶ provides that a governmental entity is not required to create a document indicating that a requested record does not exist;
- ▶ requires a governmental entity to conduct a reasonable search for a record;
- ▶ enacts a provision establishing a process for a governmental entity to petition for relief against a vexatious requester;

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- ▶ provides for a hearing before the State Records Committee;
- ▶ allows for judicial review of the State Records Committee's decision;
- ▶ allows the court to award reasonable attorney fees to a responder for a vexatious requester petition found to be without merit and waives governmental immunity for a claim of attorney fees;
- ▶ requires a person outside of a governmental entity who makes a claim of business confidentiality for a record the person provided to a governmental entity to indemnify the governmental entity in an action arising from the governmental entity's denial of access to the record;
- ~~{~~▶ ~~provides that a governmental entity's failure to provide access to a record is not an access denial if the failure to provide access is because the governmental entity:~~
  - ~~• does not retain the record;~~
  - ~~• does not retain a record that is responsive to the request; or~~
  - ~~• is not required by the act to respond to or fill the request;~~
- ~~}~~▶ limits judicial review of an appeal to the ~~{State Records Committee (committee)}~~ to the issues raised ~~{before the committee}~~ in the underlying appeal and order, except in exceptional circumstances;
- ▶ authorizes the legislative branch, the judicial branch, and the governor and lieutenant governor to establish a process for obtaining relief against a vexatious requester;
- ▶ amends the act's applicability to the governor and lieutenant governor;
- ▶ clarifies the Utah Supreme Court's jurisdiction over appeals under the act;
- ▶ defines terms; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

63G-2-103, as last amended by Laws of Utah 2021, Chapters 211, 283

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63G-2-201, as last amended by Laws of Utah 2019, Chapter 334

63G-2-309, as last amended by Laws of Utah 2019, Chapter 254

~~63G-2-400.5, as last amended by Laws of Utah 2019, Chapters 254, 334~~

63G-2-404, as last amended by Laws of Utah 2021, Chapter 325

63G-2-604, as last amended by Laws of Utah 2019, Chapter 254

63G-2-702, as last amended by Laws of Utah 2012, Chapter 369

63G-2-703, as last amended by Laws of Utah 2015, Chapter 258

78A-4-103, as last amended by Laws of Utah 2022, Chapter 388

### ENACTS:

63G-2-209, Utah Code Annotated 1953

63G-2-704, Utah Code Annotated 1953

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

Section 1. 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).

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(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;

(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,

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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:

(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 Utah Board of Higher Education, 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;

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(v) the Utah Independent Redistricting Commission; and

(vi) a law enforcement agency, as defined in Section 53-1-102, that employs one or more law enforcement officers, as defined in Section 53-13-103.

(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.

(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).

(c) Initial contact reports do not include accident reports, as that term is described in Title 41, Chapter 6a, Part 4, Accident Responsibilities.

(15) "Legislative body" means the Legislature.

(16) "Notice of compliance" means a statement confirming that a governmental entity

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has complied with 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.

(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) "Reasonable search" means a search that is:

(a) reasonable in scope and intensity; and

(b) not unreasonably burdensome for the government entity.

~~[(22)]~~ (23) (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;

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(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 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);



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(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;

(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; or

(xviii) confidential communication described in Section 58-60-102, 58-61-102, or 58-61-702.

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

~~[(24)]~~ [(25)] "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.

~~[(25)]~~ [(26)] "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.

~~[(26)]~~ [(27)] "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

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(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.

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

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

~~[(29)]~~ [(30)] "State Records Committee" means the State Records Committee created in Section 63G-2-501.

~~[(30)]~~ [(31)] "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 ~~[(1)]~~ 2. Section **63G-2-201** is amended to read:

**63G-2-201. Provisions relating to records -- Public records -- Private, controlled, protected, and other restricted records -- Disclosure and nondisclosure of records -- Certified copy of record -- Limits on obligation to respond to record request.**

(1) (a) 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)(c)]~~ (8)(a)(v); 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 segregate from the part of the electronic file that contains a private, controlled, or protected record.

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

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(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

(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.

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(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:

~~(a)~~ (i) create a record ~~including a record indicating that a requested record does not exist~~;

~~(b)~~ (ii) compile, format, manipulate, package, summarize, or tailor information;

~~(c)~~ (iii) provide a record in a particular format, medium, or program not currently maintained by the governmental entity;

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

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

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

~~(A)~~ (I) publicly accessible online; or

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

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

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

~~(B)~~ (II) provides the person requesting the record with the public publication or product and specifies where the record can be found in the public publication or product.

~~(b) (i) [-]; or~~

(vi) fulfill a person's records request if:

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(A) the person has been determined under Section 63G-2-209 to be a vexatious requester;

(B) the State Records Committee order determining the person to be a vexatious requester provides that the governmental entity is not required to fulfill a request from the person for a period of time; and

(C) the period of time described in Subsection (8)(a)(vi)(B) has not expired.

(b) A governmental entity shall conduct a reasonable search for a requested record.†

~~— (ii) A governmental entity may comply with the requirement to conduct a reasonable search under Subsection (8)(b)(i) by:~~

~~— (A) identifying a person who may be in possession of a requested record; and~~

~~— (B) collecting the records the person described in Subsection (8)(b)(ii)(A) provides.‡~~

(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 format, medium, or program not currently maintained by the governmental entity.

(b) In determining whether to fulfill a request described in Subsection (9)(a), a governmental entity may consider whether the governmental entity is able to fulfill the request without unreasonably interfering with the governmental entity's duties and responsibilities.

(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 as requested.

(10) (a) Notwithstanding any other provision of this chapter, and subject to Subsection (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 (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 (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 (10)(a).

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(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

(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 (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.

(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.

(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.

(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

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disclosure without the undue expenditure of public resources or funds.

(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 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}3~~. Section ~~{63G-2-309}~~63G-2-209 is enacted to read:

### 63G-2-209. Vexatious requester.

(1) As used in this section:

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

(b) "Executive secretary" means an individual appointed as executive secretary under Subsection 63G-2-502(3).

(c) "Respondent" means a person that a governmental entity claims is a vexatious requester under this section.

(2) (a) A governmental entity may file a petition with the committee to request relief from a person that the governmental entity claims is a vexatious requester.

(b) A petition under Subsection (2)(a) shall:

(i) be filed with the committee by submitting the petition to the executive secretary;

and

(ii) contain:

(A) the name, phone number, mailing address, and email address that the respondent submitted to the governmental entity;

(B) a description of the conduct that the governmental entity claims demonstrates that the respondent is a vexatious requester;

(C) a statement of the relief the governmental entity seeks; and

(D) a sworn declaration or an unsworn declaration, as those terms are defined in Section 78B-18a-102.

(c) On the day the governmental entity files a petition under Subsection (2)(a), the governmental entity shall send a copy of the petition to the respondent.

(3) (a) Except as provided in Subsection (3)(c), no later than seven business days after

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receiving the petition the executive secretary shall schedule a hearing for the committee to consider the petition, to be held:

(i) (A) at the next regularly scheduled committee meeting falling at least 16 calendar days after the date the petition is filed but no later than 64 calendar days after the date the petition is filed; or

(B) at a regularly scheduled committee meeting that is later than the period described in Subsection (3)(a)(i)(A) if the later committee meeting is the first regularly scheduled committee meeting at which there are fewer than 10 appeals scheduled to be heard; or

(ii) at a date sooner than a period described in Subsection (3)(a)(i) if the governmental entity:

(A) requests an expedited hearing; and

(B) shows good cause for the expedited hearing.

(b) If the executive secretary schedules a hearing under Subsection (3)(a), the executive secretary shall:

(i) send a copy of the petition to each member of the committee;

(ii) send a copy of the notice of hearing to the governmental entity, the respondent, and each member of the committee; and

(iii) if applicable, send a copy of the respondent's statement under Subsection (3)(c)(ii) to the governmental entity and each member of the committee.

(c) (i) The executive secretary may decline to schedule a hearing if:

(A) the executive secretary recommends that the committee deny the petition without a hearing because the petition does not warrant a hearing;

(B) the executive secretary consults with the chair of the committee and at least one other member of the committee; and

(C) the chair of the committee and all committee members with whom the executive secretary consults under this Subsection (3)(c)(i) agree with the executive secretary's recommendation to deny the petition without a hearing.

(ii) The executive secretary may, in making the determination described in Subsection (3)(c)(i)(A), request that the respondent submit a written response to the petition.

(d) If the executive secretary declines to schedule a hearing in accordance with Subsection (3)(c):



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(i) the executive secretary shall send a notice to the governmental entity and the respondent indicating that the request for a hearing has been denied and the reasons for the denial; and

(ii) the committee shall:

(A) vote at the committee's next regular meeting to accept or reject the recommendation to deny the petition without a hearing;

(B) issue an order that includes the reasons for the committee's decision to accept or reject the recommendation; and

(C) if the committee rejects the recommendation to deny the petition without a hearing, direct the executive secretary to schedule a hearing as provided in Subsection (3)(a).

(4) (a) No later than five business days before the hearing, the respondent may submit to the executive secretary and the governmental entity a written statement in response to the governmental entity's petition.

(b) The written statement described in Subsection (4)(a) may be the same document as the respondent's written response described in Subsection (3)(c)(ii).

(5) No later than 10 business days before a hearing under this section, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention with the committee as provided in Subsection 63G-2-403(6).

(6) If a respondent fails to submit a written statement under Subsection (4) or fails to appear at the hearing, the committee shall:

(a) cancel the hearing; or

(b) hold the hearing in accordance with Subsection (7).

(7) (a) If the committee holds a hearing scheduled under Subsection (3), the committee shall:

(i) allow the governmental entity to testify, present evidence, and comment on the issues; and

(ii) allow the respondent to testify, present evidence, and comment on the issues if the respondent appears at the hearing.

(b) At the hearing, the committee may allow another interested person to comment on the issues.

(c) (i) Discovery is prohibited, but the committee may issue subpoenas or other orders

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to compel production of necessary testimony or evidence.

(ii) If the subject of a committee subpoena disobeys or fails to comply with the subpoena, the committee may file a motion with the district court for an order to compel obedience to the subpoena.

(8) (a) No later than seven business days after a hearing is held as scheduled under Subsection (3) or the date on which a hearing cancelled under Subsection (6) was scheduled to be held, the committee shall:

(i) determine, in accordance with Subsection (9), whether the governmental entity has demonstrated that the respondent is a vexatious requester; and

(ii) issue a signed order that grants or denies the petition in whole or in part.

(b) Upon granting the petition in whole or in part, the committee may order that the governmental entity is not required to fulfill requests from the respondent or a person that submits a request on the respondent's behalf for a period of time that may not exceed one year.

(c) The committee's order shall contain:

(i) a statement of the reasons for the committee's decision;

(ii) if the petition is granted in whole or in part, a specific description of the conduct the committee determines demonstrates that the respondent is a vexatious requester, including any conduct the committee finds to constitute an abuse of the right of access to information under this chapter or a substantial interference with the operations of the governmental entity;

(iii) a statement that the respondent or governmental entity may seek judicial review of the committee's decision in district court as provided in Section 63G-2-404; and

(iv) a brief summary of the judicial review process, the time limits for seeking judicial review, and a notice that in order to protect applicable rights in connection with the judicial review, the person seeking judicial review of the committee's decision may wish to seek advice from an attorney.

(9) In determining whether a governmental entity has demonstrated that the respondent is a vexatious requester, the committee shall consider:

(a) the interests described in Section 63G-2-102;

(b) as applicable:

(i) the number of requests the respondent has submitted to the governmental entity, including the number of pending record requests;

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(ii) the scope, nature, content, language, and subject matter of record requests the respondent has submitted to the governmental entity;

(iii) the nature, content, language, and subject matter of any communications to the governmental entity related to a record request of the respondent; and

(iv) any pattern of conduct that the committee determines to constitute:

(A) an abuse of the right of access to information under this chapter; or

(B) substantial interference with the operations of the governmental entity; and

(c) any other factor the committee considers relevant.

(10) (a) A governmental entity or respondent aggrieved by the committee's decision under this section may seek judicial review of the decision as provided in Section 63G-2-404.

(b) In a judicial review under Subsection (10)(a), the court may award reasonable attorney fees to a respondent if:

(i) the respondent substantially prevails; and

(ii) the court determines that:

(A) the petition filed by the governmental entity under Subsection (2) is without merit;

and

(B) the governmental entity's actions in filing the petition lack a reasonable basis in fact or law.

(c) Except for the waiver of immunity in Subsection 63G-7-301(2)(e), a claim for attorney fees under this Subsection (10) is not subject to Chapter 7, Governmental Immunity Act of Utah.

(11) Notwithstanding any other provision of this chapter, a records request that a governmental entity is not required to fulfill in accordance with an order issued under this section may not be the subject of an appeal under Part 4, Appeals.

(12) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the committee shall make rules to implement this section.

Section 4. 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:

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- (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);
- (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).

(c) A person who makes a claim of business confidentiality under this Subsection (1) shall protect, defend, and indemnify the governmental entity that retains the record, and all staff and employees of the governmental entity from and against any claims, liability, or damages resulting from or arising from a denial of access to the record as a protected record **based on the claim of business confidentiality.**

(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

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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) Subsection (2)(a) does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee.

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

Section ~~{3}~~5. Section ~~{63G-2-400.5}~~63G-2-404 is amended to read:

~~{~~ **63G-2-400.5. Definitions.**

~~\_\_\_\_\_~~ As used in this part:

~~\_\_\_\_\_~~ (1) ~~(a)~~ "Access denial" means a governmental entity's denial, under Subsection 63G-2-204(9) or Section 63G-2-205, in whole or in part, of a record request.

~~\_\_\_\_\_~~ ~~(b) "Access denial" does not include a governmental entity's failure to provide access to a record because the governmental entity:~~

~~\_\_\_\_\_~~ ~~(i) does not retain the record;~~

~~\_\_\_\_\_~~ ~~(ii) does not retain a record that is responsive to the request; or~~

~~\_\_\_\_\_~~ ~~(iii) is not required to respond to or fill the request under this chapter.~~

~~\_\_\_\_\_~~ (2) "Appellate affirmation" means a decision of a chief administrative officer, local appeals board, or 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.

~~\_\_\_\_\_~~ (6) "Records committee appellant" means:

~~\_\_\_\_\_~~ (a) a political subdivision that seeks to appeal a decision of a local appeals board to the State Records Committee; or

~~\_\_\_\_\_~~ (b) a requester or interested party who seeks to appeal to the State Records Committee a decision affirming an access denial.

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

~~\_\_\_\_\_~~ Section 4. Section ~~63G-2-404~~ is amended to read:

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### ‡ 63G-2-404. Judicial review.

(1) (a) A petition for judicial review of an order or decision, as allowed under this part, in Section 63G-2-209, 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 State Records Committee is a necessary party to a petition for judicial review of a State Records Committee order.

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

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

~~[(a)]~~ (i) the petitioner's name and mailing address;

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

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

~~[(d)]~~ (iv) a request for relief specifying the type and extent of relief requested; and

~~[(e)]~~ (v) a statement of the reasons why the petitioner is entitled to relief.

(b) ~~{A}~~ Except in exceptional circumstances, a petition for judicial review may not raise an issue that was not raised in the {petitioner's} underlying appeal {to the State Records Committee under Section 63G-2-403} and order.

(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 State Records Committee order, allow introduction of evidence presented to the State Records Committee;

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- (ii) determine all questions of fact and law without a jury; and
- (iii) decide the issue at the earliest practical opportunity.

(b) A court may remand a petition for judicial review to the State Records Committee

if:

(i) the remand is to allow the State Records Committee to decide an issue that:

(A) involves access to a record; and

(B) the State Records Committee has not previously addressed in the proceeding that led to the petition for judicial review; and

(ii) the court determines that remanding to the State Records Committee is in the best interests of justice.

(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 6. 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 the governmental entity's own retention schedules under [Part 7, Applicability to Political Subdivisions, the Judiciary, and the Legislature] Part 7, Applicability to Political Subdivisions, the Judiciary, the Legislature, and the Governor and Lieutenant Governor, each governmental entity shall file with the 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 Records Management Committee under Subsection 63A-12-113(1)(b), the governmental entity shall maintain and

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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 Records Management Committee under the requirements of this section is a public record.

Section 7. Section 63G-2-702 is amended to read:

### **Part 7. Applicability to Political Subdivisions, the Judiciary, the Legislature, and the Governor and Lieutenant Governor**

#### **63G-2-702. Applicability to the judiciary.**

(1) The judiciary is subject to the provisions of this chapter except as provided in this section.

(2) (a) The judiciary is not subject to:

(i) Section 63G-2-209; or

(ii) Part 4, Appeals, except as provided in Subsection [(5)] (6).

(b) The judiciary is not subject to Part 5, State Records Committee, and Part 6, Collection of Information and Accuracy of Records.

(c) The judiciary is subject to only the following sections in Part 9, Public Associations: Sections 63A-12-105 and 63A-12-106.

(3) The Judicial Council, the Administrative Office of the Courts, the courts, and other administrative units in the judicial branch shall designate and classify their records in accordance with Sections 63G-2-301 through 63G-2-305.

(4) Substantially consistent with the provisions of this chapter, the Judicial Council shall:

(a) make rules governing requests for access, fees, classification, designation, segregation, management, retention, denials and appeals of requests for access and retention, and amendment of judicial records;

(b) establish an appellate board to handle appeals from denials of requests for access and provide that a requester who is denied access by the appellate board may file a lawsuit in



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district court; and

(c) provide standards for the management and retention of judicial records substantially consistent with Section 63A-12-103.

(5) The Judicial Council may:

(a) establish a process for an administrative unit of the judicial branch to petition for relief from a person that the administrative unit claims is a vexatious requester; and

(b) establish an appellate board to hear a petition for relief from a person that an administrative unit of the judicial branch claims is a vexatious requester.

[5] (6) Rules governing appeals from denials of requests for access shall substantially comply with the time limits provided in Section 63G-2-204 and Part 4, Appeals.

[6] (7) Upon request, the state archivist shall:

(a) assist with and advise concerning the establishment of a records management program in the judicial branch; and

(b) as required by the judiciary, provide program services similar to those available to the executive and legislative branches of government as provided in this chapter and Title 63A, Chapter 12, Division of Archives and Records Service.

Section 8. Section 63G-2-703 is amended to read:

**63G-2-703. Applicability to the Legislature.**

(1) The Legislature and its staff offices shall designate and classify records in accordance with Sections 63G-2-301 through 63G-2-305 as public, private, controlled, or protected.

(2) (a) The Legislature and its staff offices are not subject to [Section 63G-2-203 or to]:

(i) Section 63G-2-203 or 63G-2-209; or

(ii) Part 4, Appeals, Part 5, State Records Committee, or Part 6, Collection of Information and Accuracy of Records.

(b) The Legislature is subject to only the following sections in Title 63A, Chapter 12, Division of Archives and Records Service: Sections 63A-12-102 and 63A-12-106.

(3) The Legislature, through the Legislative Management Committee:

(a) (i) shall establish policies to handle requests for classification, designation, fees, access, denials, segregation, appeals, management, retention, and amendment of records; and

[b] (ii) may establish an appellate board to hear appeals from denials of access[-]; and

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(b) may establish:

(i) a process for determining that a person is a vexatious requester, including a process for an appeal from a determination that a person is a vexatious requester; and

(ii) appropriate limitations on a person determined to be a vexatious requester.

(4) Policies shall include reasonable times for responding to access requests consistent with the provisions of Part 2, Access to Records, fees, and reasonable time limits for appeals.

(5) Upon request, the state archivist shall:

(a) assist with and advise concerning the establishment of a records management program in the Legislature; and

(b) as required by the Legislature, provide program services similar to those available to the executive branch of government, as provided in this chapter and Title 63A, Chapter 12, Division of Archives and Records Service.

Section 9. Section 63G-2-704 is enacted to read:

### **63G-2-704. Applicability to the governor and lieutenant governor.**

(1) The governor, the office of the governor, the lieutenant governor, and the office of the lieutenant governor shall designate and classify records in accordance with Sections 63G-2-301 through 63G-2-305 as public, private, controlled or protected.

(2) (a) The governor, the office of the governor, the lieutenant governor, and the office of the lieutenant governor are not subject to:

(i) Section 63G-2-203;

(ii) Section 63G-2-209;

(iii) Section 63G-2-401; or

(iv) Part 6, Collection of Information and Accuracy of Records.

(b) The governor, the office of the governor, the lieutenant governor, and the office of the lieutenant governor are subject to only the following sections in Title 63A, Chapter 12, Division of Archives and Records Service:

(i) Section 63A-12-102; and

(ii) Section 63A-12-106.

(3) The governor and lieutenant governor:

(a) (i) shall establish policies to handle requests for classification, designation, fees, access, denials, segregation, appeals to the chief administrative officer, management, retention,

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and amendment of records; and

(i) may establish an appellate board to hear appeals from denials of access; and

(b) may establish:

(i) a process for determining that a person is a vexatious requester, including a process for an appeal from a determination that a person is a vexatious requester; and

(ii) appropriate limitations on a person determined to be a vexatious requester.

(4) Policies described in Subsection (3) shall include reasonable times for responding to access requests consistent with the provisions of Part 2, Access to Records, fees, and reasonable time limits for appeals.

(5) Upon request, the state archivist shall:

(a) assist with and advise concerning the establishment of a records management program for the governor, the office of the governor, the lieutenant governor, and the office of the lieutenant governor; and

(b) as required by the governor or lieutenant governor, provide program services as provided in this chapter and Title 63A, Chapter 12, Division of Archives and Records Service.

Section 10. Section 78A-4-103 is amended to read:

### 78A-4-103. Court of Appeals jurisdiction.

(1) As used in this section, ["informat] "adjudicative proceeding" does not include a proceeding under Title 63G, Chapter 2, Part 4, Appeals, that precedes judicial review under Section 63G-2-404.

(2) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

(a) to carry into effect its judgments, orders, and decrees; or

(b) in aid of its jurisdiction.

(3) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) (i) a final order or decree resulting from:

(A) a formal adjudicative proceeding of a state agency;

(B) a special adjudicative proceeding, as described in Section 19-1-301.5; or

(C) a hearing before a local school board or the State Board of Education as described in Section 53G-11-515; or

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(ii) an appeal from the district court review of an informal adjudicative proceeding of an agency other than the following:

(A) the Public Service Commission;

(B) the State Tax Commission;

(C) the School and Institutional Trust Lands Board of Trustees;

(D) the Division of Forestry, Fire, and State Lands, for an action reviewed by the executive director of the Department of Natural Resources;

(E) the Board of Oil, Gas, and Mining; or

(F) the state engineer;

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section 63G-3-602;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(4) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any

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matter over which the Court of Appeals has original appellate jurisdiction.

(5) The Court of Appeals shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.