

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

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;
- ▶ 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



26 indemnify the governmental entity in an action arising from the governmental entity's denial of
27 access to the record;

28 ▶ limits judicial review of an appeal to the to the issues raised in the underlying
29 appeal and order, except in exceptional circumstances;

30 ▶ authorizes the legislative branch, the judicial branch, and the governor and
31 lieutenant governor to establish a process for obtaining relief against a vexatious
32 requester;

33 ▶ amends the act's applicability to the governor and lieutenant governor;

34 ▶ clarifies the Utah Supreme Court's jurisdiction over appeals under the act;

35 ▶ defines terms; and

36 ▶ makes technical and conforming changes.

37 **Money Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 None

41 **Utah Code Sections Affected:**

42 AMENDS:

43 **63G-2-103**, as last amended by Laws of Utah 2021, Chapters 211, 283

44 **63G-2-201**, as last amended by Laws of Utah 2019, Chapter 334

45 **63G-2-309**, as last amended by Laws of Utah 2019, Chapter 254

46 **63G-2-404**, as last amended by Laws of Utah 2021, Chapter 325

47 **63G-2-604**, as last amended by Laws of Utah 2019, Chapter 254

48 **63G-2-702**, as last amended by Laws of Utah 2012, Chapter 369

49 **63G-2-703**, as last amended by Laws of Utah 2015, Chapter 258

50 **63G-7-301**, as last amended by Laws of Utah 2022, Chapters 388, 428

51 **78A-4-103**, as last amended by Laws of Utah 2022, Chapter 388

52 ENACTS:

53 **63G-2-209**, Utah Code Annotated 1953

54 **63G-2-704**, Utah Code Annotated 1953



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

57 Section 1. Section **63G-2-103** is amended to read:

58 **63G-2-103. Definitions.**

59 As used in this chapter:

60 (1) "Audit" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

- 88 (5) (a) "Contractor" means:
- 89 (i) any person who contracts with a governmental entity to provide goods or services
- 90 directly to a governmental entity; or
- 91 (ii) any private, nonprofit organization that receives funds from a governmental entity.
- 92 (b) "Contractor" does not mean a private provider.
- 93 (6) "Controlled record" means a record containing data on individuals that is controlled
- 94 as provided by Section [63G-2-304](#).
- 95 (7) "Designation," "designate," and their derivative forms mean indicating, based on a
- 96 governmental entity's familiarity with a record series or based on a governmental entity's
- 97 review of a reasonable sample of a record series, the primary classification that a majority of
- 98 records in a record series would be given if classified and the classification that other records
- 99 typically present in the record series would be given if classified.
- 100 (8) "Elected official" means each person elected to a state office, county office,
- 101 municipal office, school board or school district office, local district office, or special service
- 102 district office, but does not include judges.
- 103 (9) "Explosive" means a chemical compound, device, or mixture:
- 104 (a) commonly used or intended for the purpose of producing an explosion; and
- 105 (b) that contains oxidizing or combustive units or other ingredients in proportions,
- 106 quantities, or packing so that:
- 107 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
- 108 compound or mixture may cause a sudden generation of highly heated gases; and
- 109 (ii) the resultant gaseous pressures are capable of:
- 110 (A) producing destructive effects on contiguous objects; or
- 111 (B) causing death or serious bodily injury.
- 112 (10) "Government audit agency" means any governmental entity that conducts an audit.
- 113 (11) (a) "Governmental entity" means:
- 114 (i) executive department agencies of the state, the offices of the governor, lieutenant
- 115 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
- 116 the Board of Examiners, the National Guard, the Career Service Review Office, the State
- 117 Board of Education, the Utah Board of Higher Education, and the State Archives;
- 118 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal

119 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
120 committees, except any political party, group, caucus, or rules or sifting committee of the
121 Legislature;

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

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

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

129 (b) "Governmental entity" also means:

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

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

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

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

137 (v) the Utah Independent Redistricting Commission; and

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

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

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

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

147 (14) (a) "Initial contact report" means an initial written or recorded report, however
148 titled, prepared by peace officers engaged in public patrol or response duties describing official
149 actions initially taken in response to either a public complaint about or the discovery of an

150 apparent violation of law, which report may describe:

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

152 (ii) names of victims;

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

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

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

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

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

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

166 (15) "Legislative body" means the Legislature.

167 (16) "Notice of compliance" means a statement confirming that a governmental entity
168 has complied with an order of the State Records Committee.

169 (17) "Person" means:

170 (a) an individual;

171 (b) a nonprofit or profit corporation;

172 (c) a partnership;

173 (d) a sole proprietorship;

174 (e) other type of business organization; or

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

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

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

180 (20) "Protected record" means a record that is classified protected as provided by

181 Section [63G-2-305](#).

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

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

185 (a) reasonable in scope and intensity; and

186 (b) not unreasonably burdensome for the government entity.

187 [~~22~~] (23) (a) "Record" means a book, letter, document, paper, map, plan, photograph,
188 film, card, tape, recording, electronic data, or other documentary material regardless of physical
189 form or characteristics:

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

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

194 (b) "Record" does not mean:

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

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

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

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

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

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

205 (v) proprietary software;

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

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

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

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

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

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

218 (A) a member of the judiciary;

219 (B) an administrative law judge;

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

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

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

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

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

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

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

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

237 (A) a Senate or House Ethics Committee;

238 (B) the Independent Legislative Ethics Commission;

239 (C) the Independent Executive Branch Ethics Commission, created in Section
240 63A-14-202; or

241 (D) the Political Subdivisions Ethics Review Commission established in Section
242 63A-15-201; or

243 (xviii) confidential communication described in Section 58-60-102, 58-61-102, or
244 58-61-702.

245 [~~(23)~~] (24) "Record series" means a group of records that may be treated as a unit for
246 purposes of designation, description, management, or disposition.

247 [~~(24)~~] (25) "Records officer" means the individual appointed by the chief
248 administrative officer of each governmental entity, or the political subdivision to work with
249 state archives in the care, maintenance, scheduling, designation, classification, disposal, and
250 preservation of records.

251 [~~(25)~~] (26) "Schedule," "scheduling," and their derivative forms mean the process of
252 specifying the length of time each record series should be retained by a governmental entity for
253 administrative, legal, fiscal, or historical purposes and when each record series should be
254 transferred to the state archives or destroyed.

255 [~~(26)~~] (27) "Sponsored research" means research, training, and other sponsored
256 activities as defined by the federal Executive Office of the President, Office of Management
257 and Budget:

258 (a) conducted:

259 (i) by an institution within the state system of higher education defined in Section
260 53B-1-102; and

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

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

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

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

266 [~~(27)~~] (28) "State archives" means the Division of Archives and Records Service
267 created in Section 63A-12-101.

268 [~~(28)~~] (29) "State archivist" means the director of the state archives.

269 [~~(29)~~] (30) "State Records Committee" means the State Records Committee created in
270 Section 63G-2-501.

271 [~~(30)~~] (31) "Summary data" means statistical records and compilations that contain
272 data derived from private, controlled, or protected information but that do not disclose private,
273 controlled, or protected information.

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

275 **63G-2-201. Provisions relating to records -- Public records -- Private, controlled,**
276 **protected, and other restricted records -- Disclosure and nondisclosure of records --**
277 **Certified copy of record -- Limits on obligation to respond to record request.**

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

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

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

283 (ii) that is the subject of a records request that the governmental entity is not required
284 to fill under Subsection [~~(8)(e)~~] (8)(a)(v); or

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

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

289 (C) that the governmental entity cannot readily segregate from the part of the electronic
290 file that contains a private, controlled, or protected record.

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

292 (3) The following records are not public:

293 (a) a record that is private, controlled, or protected under Sections 63G-2-302,
294 63G-2-303, 63G-2-304, and 63G-2-305; and

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

299 (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or
300 63G-2-305 may be classified private, controlled, or protected.

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

304 (b) A governmental entity may disclose a record that is private under Subsection

305 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in
306 Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee,
307 determines that:

308 (i) there is no interest in restricting access to the record; or
309 (ii) the interests favoring access are greater than or equal to the interest favoring
310 restriction of access.

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

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

314 (A) is mutually beneficial to:

315 (I) the subject of the record;

316 (II) the governmental entity; and

317 (III) the public; and

318 (B) serves a public purpose related to:

319 (I) public safety; or

320 (II) consumer protection; and

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

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

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

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

331 (a) the person requesting the record has a right to inspect it;

332 (b) the person identifies the record with reasonable specificity; and

333 (c) the person pays the lawful fees.

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

335 [~~(a)~~] (i) create a record;

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

337 ~~[(c)]~~ (iii) provide a record in a particular format, medium, or program not currently

338 maintained by the governmental entity;

339 ~~[(d)]~~ (iv) fulfill a person's records request if the request unreasonably duplicates prior

340 records requests from that person; ~~[or]~~

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

342 ~~[(f)]~~ (A) the record requested is:

343 ~~[(A)]~~ (I) publicly accessible online; or

344 ~~[(B)]~~ (II) included in a public publication or product produced by the governmental

345 entity receiving the request; and

346 ~~[(g)]~~ (B) the governmental entity:

347 ~~[(A)]~~ (I) specifies to the person requesting the record where the record is accessible

348 online; or

349 ~~[(B)]~~ (II) provides the person requesting the record with the public publication or

350 product and specifies where the record can be found in the public publication or product~~[-];~~ or

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

352 (A) the person has been determined under Section [63G-2-209](#) to be a vexatious

353 requester;

354 (B) the State Records Committee order determining the person to be a vexatious

355 requester provides that the governmental entity is not required to fulfill a request from the

356 person for a period of time; and

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

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

359 (9) (a) Although not required to do so, a governmental entity may, upon request from

360 the person who submitted the records request, compile, format, manipulate, package,

361 summarize, or tailor information or provide a record in a format, medium, or program not

362 currently maintained by the governmental entity.

363 (b) In determining whether to fulfill a request described in Subsection (9)(a), a

364 governmental entity may consider whether the governmental entity is able to fulfill the request

365 without unreasonably interfering with the governmental entity's duties and responsibilities.

366 (c) A governmental entity may require a person who makes a request under Subsection

367 (9)(a) to pay the governmental entity, in accordance with Section 63G-2-203, for providing the
368 information or record as requested.

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

373 (b) Subsection (10)(a) does not apply to:

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

377 (ii) a record request that is submitted by an attorney of an individual described in
378 Subsection (10)(a).

379 (11) (a) A governmental entity may allow a person requesting more than 50 pages of
380 records to copy the records if:

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

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

386 (b) If the requirements of Subsection (11)(a) are met, the governmental entity may:

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

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

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

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

398 ownership of the intellectual property right.

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

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

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

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

407 (c) the electronic copy of the record:

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

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

411 (15) In determining whether a record is properly classified as private under Subsection
412 [63G-2-302\(2\)\(d\)](#), the governmental entity, State Records Committee, local appeals board, or
413 court shall consider and weigh:

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

416 (b) any public interests served by disclosure.

417 Section 3. Section [63G-2-209](#) is enacted to read:

418 **63G-2-209. Vexatious requester.**

419 (1) As used in this section:

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

421 (b) "Executive secretary" means an individual appointed as executive secretary under
422 Subsection [63G-2-502\(3\)](#).

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

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

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

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

429 and

430 (ii) contain:

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

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

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

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

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

440 (3) (a) Except as provided in Subsection (3)(c), no later than seven business days after
441 receiving the petition the executive secretary shall schedule a hearing for the committee to
442 consider the petition, to be held:

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

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

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

451 (A) requests an expedited hearing; and

452 (B) shows good cause for the expedited hearing.

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

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

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

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

460 (c) (i) The executive secretary may decline to schedule a hearing if:
461 (A) the executive secretary recommends that the committee deny the petition without a
462 hearing because the petition does not warrant a hearing;
463 (B) the executive secretary consults with the chair of the committee and at least one
464 other member of the committee; and
465 (C) the chair of the committee and all committee members with whom the executive
466 secretary consults under this Subsection (3)(c)(i) agree with the executive secretary's
467 recommendation to deny the petition without a hearing.
468 (ii) The executive secretary may, in making the determination described in Subsection
469 (3)(c)(i)(A), request that the respondent submit a written response to the petition.
470 (d) If the executive secretary declines to schedule a hearing in accordance with
471 Subsection (3)(c):
472 (i) the executive secretary shall send a notice to the governmental entity and the
473 respondent indicating that the request for a hearing has been denied and the reasons for the
474 denial; and
475 (ii) the committee shall:
476 (A) vote at the committee's next regular meeting to accept or reject the
477 recommendation to deny the petition without a hearing;
478 (B) issue an order that includes the reasons for the committee's decision to accept or
479 reject the recommendation; and
480 (C) if the committee rejects the recommendation to deny the petition without a hearing,
481 direct the executive secretary to schedule a hearing as provided in Subsection (3)(a).
482 (4) (a) No later than five business days before the hearing, the respondent may submit
483 to the executive secretary and the governmental entity a written statement in response to the
484 governmental entity's petition.
485 (b) The written statement described in Subsection (4)(a) may be the same document as
486 the respondent's written response described in Subsection (3)(c)(ii).
487 (5) No later than 10 business days before a hearing under this section, a person whose
488 legal interests may be substantially affected by the proceeding may file a request for
489 intervention with the committee as provided in Subsection [63G-2-403\(6\)](#).
490 (6) If a respondent fails to submit a written statement under Subsection (4) or fails to

491 appear at the hearing, the committee shall:

492 (a) cancel the hearing; or

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

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

495 shall:

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

497 issues; and

498 (ii) allow the respondent to testify, present evidence, and comment on the issues if the

499 respondent appears at the hearing.

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

501 the issues.

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

503 to compel production of necessary testimony or evidence.

504 (ii) If the subject of a committee subpoena disobeys or fails to comply with the

505 subpoena, the committee may file a motion with the district court for an order to compel

506 obedience to the subpoena.

507 (8) (a) No later than seven business days after a hearing is held as scheduled under

508 Subsection (3) or the date on which a hearing cancelled under Subsection (6) was scheduled to

509 be held, the committee shall:

510 (i) determine, in accordance with Subsection (9), whether the governmental entity has

511 demonstrated that the respondent is a vexatious requester; and

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

513 (b) Upon granting the petition in whole or in part, the committee may order that the

514 governmental entity is not required to fulfill requests from the respondent or a person that

515 submits a request on the respondent's behalf for a period of time that may not exceed one year.

516 (c) The committee's order shall contain:

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

518 (ii) if the petition is granted in whole or in part, a specific description of the conduct

519 the committee determines demonstrates that the respondent is a vexatious requester, including

520 any conduct the committee finds to constitute an abuse of the right of access to information

521 under this chapter or a substantial interference with the operations of the governmental entity;

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

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

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

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

531 (b) as applicable:

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

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

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

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

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

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

541 (c) any other factor the committee considers relevant.

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

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

546 (i) the respondent substantially prevails; and

547 (ii) the court determines that:

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

549 and

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

552 (c) Except for the waiver of immunity in Subsection 63G-7-301(2)(e), a claim for

553 attorney fees under this Subsection (10) is not subject to Chapter 7, Governmental Immunity
554 Act of Utah.

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

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

560 Section 4. Section **63G-2-309** is amended to read:

561 **63G-2-309. Confidentiality claims.**

562 (1) (a) (i) Any person who provides to a governmental entity a record that the person
563 believes should be protected under Subsection **63G-2-305(1)** or (2) or both Subsections
564 **63G-2-305(1)** and (2) shall provide with the record:

565 (A) a written claim of business confidentiality; and

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

567 (ii) Any of the following who provides to an institution within the state system of
568 higher education defined in Section **53B-1-102** a record that the person or governmental entity
569 believes should be protected under Subsection **63G-2-305(40)(a)(ii)** or (vi) or both Subsections
570 **63G-2-305(40)(a)(ii)** and (vi) shall provide the institution within the state system of higher
571 education a written claim of business confidentiality in accordance with Section **53B-16-304**:

572 (A) a person;

573 (B) a federal governmental entity;

574 (C) a state governmental entity; or

575 (D) a local governmental entity.

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

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

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

580 (B) Subsection **63G-2-305(2)**;

581 (C) Subsection **63G-2-305(40)(a)(ii)**;

582 (D) Subsection **63G-2-305(40)(a)(vi)**; or

583 (E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D);

584 or

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

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

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

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

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

602 Section 5. Section 63G-2-404 is amended to read:

603 **63G-2-404. Judicial review.**

604 (1) (a) A petition for judicial review of an order or decision, as allowed under this part,
605 in Section 63G-2-209, or in Subsection 63G-2-701(6)(a)(ii), shall be filed no later than 30 days
606 after the date of the order or decision.

607 (b) The State Records Committee is a necessary party to a petition for judicial review
608 of a State Records Committee order.

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

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

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

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

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

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

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

621 **(b) Except in exceptional circumstances, a petition for judicial review may not raise an**
622 **issue that was not raised in the underlying appeal and order.**

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

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

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

629 (6) (a) The court shall:

630 (i) make the court's decision de novo, but, for a petition seeking judicial review of a
631 State Records Committee order, allow introduction of evidence presented to the State Records
632 Committee;

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

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

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

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

638 (A) involves access to a record; and

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

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

643 (7) (a) Except as provided in Section [63G-2-406](#), the court may, upon consideration
644 and weighing of the various interests and public policies pertinent to the classification and
645 disclosure or nondisclosure, order the disclosure of information properly classified as private,

646 controlled, or protected if the interest favoring access is greater than or equal to the interest
647 favoring restriction of access.

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

653 Section 6. Section 63G-2-604 is amended to read:

654 **63G-2-604. Retention and disposition of records.**

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

662 (b) After a retention schedule is reviewed and approved by the Records Management
663 Committee under Subsection 63A-12-113(1)(b), the governmental entity shall maintain and
664 destroy records in accordance with the retention schedule.

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

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

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

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

675 **63G-2-702. Applicability to the judiciary.**

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

677 section.

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

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

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

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

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

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

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

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

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

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

698 (5) The Judicial Council may:

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

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

703 [~~(5)~~] (6) Rules governing appeals from denials of requests for access shall substantially
704 comply with the time limits provided in Section 63G-2-204 and Part 4, Appeals.

705 [~~(6)~~] (7) Upon request, the state archivist shall:

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

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

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

712 **63G-2-703. Applicability to the Legislature.**

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

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

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

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

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

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

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

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

726 (b) may establish:

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

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

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

732 (5) Upon request, the state archivist shall:

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

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

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

739 **63G-2-704. Applicability to the governor and lieutenant governor.**

740 (1) The governor, the office of the governor, the lieutenant governor, and the office of
741 the lieutenant governor shall designate and classify records in accordance with Sections
742 63G-2-301 through 63G-2-305 as public, private, controlled or protected.

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

745 (i) Section 63G-2-203;

746 (ii) Section 63G-2-209;

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

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

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

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

753 (ii) Section 63A-12-106.

754 (3) The governor and lieutenant governor:

755 (a) (i) shall establish policies to handle requests for classification, designation, fees,
756 access, denials, segregation, appeals to the chief administrative officer, management, retention,
757 and amendment of records; and

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

759 (b) may establish:

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

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

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

766 (5) Upon request, the state archivist shall:

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

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

772 Section 10. Section **63G-7-301** is amended to read:

773 **63G-7-301. Waivers of immunity.**

774 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual
775 obligation.

776 (b) Actions arising out of contractual rights or obligations are not subject to the
777 requirements of Section [63G-7-401](#), [63G-7-402](#), [63G-7-403](#), or [63G-7-601](#).

778 (c) The Division of Water Resources is not liable for failure to deliver water from a
779 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
780 Act, if the failure to deliver the contractual amount of water is due to drought, other natural
781 condition, or safety condition that causes a deficiency in the amount of available water.

782 (2) Immunity from suit of each governmental entity is waived:

783 (a) as to any action brought to recover, obtain possession of, or quiet title to real or
784 personal property;

785 (b) as to any action brought to foreclose mortgages or other liens on real or personal
786 property, to determine any adverse claim on real or personal property, or to obtain an
787 adjudication about any mortgage or other lien that the governmental entity may have or claim
788 on real or personal property;

789 (c) as to any action based on the negligent destruction, damage, or loss of goods,
790 merchandise, or other property while it is in the possession of any governmental entity or
791 employee, if the property was seized for the purpose of forfeiture under any provision of state
792 law;

793 (d) subject to Section [63G-7-302](#), as to any action brought under the authority of Utah
794 Constitution, Article I, Section 22, for the recovery of compensation from the governmental
795 entity when the governmental entity has taken or damaged private property for public uses
796 without just compensation;

797 (e) as to any claim for attorney fees or costs under [~~Sections~~] Section [63G-2-209](#),
798 [63G-2-405](#) [~~and~~], or [63G-2-802](#);

799 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees
800 Act;

801 (g) as to any action brought to obtain relief from a land use regulation that imposes a
802 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious
803 Land Use Act;

804 (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

805 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
806 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

807 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
808 or other public improvement;

809 (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury
810 proximately caused by a negligent act or omission of an employee committed within the scope
811 of employment;

812 (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from
813 a sexual battery, as provided in Section 76-9-702.1, committed:

814 (i) against a student of a public elementary or secondary school, including a charter
815 school; and

816 (ii) by an employee of a public elementary or secondary school or charter school who:

817 (A) at the time of the sexual battery, held a position of special trust, as defined in
818 Section 76-5-404.1, with respect to the student;

819 (B) is criminally charged in connection with the sexual battery; and

820 (C) the public elementary or secondary school or charter school knew or in the exercise
821 of reasonable care should have known, at the time of the employee's hiring, to be a sex
822 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex
823 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a
824 background check under Section 53G-11-402; and

825 (k) as to any action brought under Section 78B-6-2303.

826 (3) (a) As used in this Subsection (3):

827 (i) "Code of conduct" means a code of conduct that:

828 (A) is not less stringent than a model code of conduct, created by the State Board of
829 Education, establishing a professional standard of care for preventing the conduct described in
830 Subsection (3)(a)(i)(D);

831 (B) is adopted by the applicable local education governing body;

832 (C) regulates behavior of a school employee toward a student; and
833 (D) includes a prohibition against any sexual conduct between an employee and a
834 student and against the employee and student sharing any sexually explicit or lewd
835 communication, image, or photograph.

836 (ii) "Local education agency" means:

837 (A) a school district;

838 (B) a charter school; or

839 (C) the Utah Schools for the Deaf and the Blind.

840 (iii) "Local education governing board" means:

841 (A) for a school district, the local school board;

842 (B) for a charter school, the charter school governing board; or

843 (C) for the Utah Schools for the Deaf and the Blind, the state board.

844 (iv) "Public school" means a public elementary or secondary school.

845 (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

846 (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering
847 the term "child" in that section to include an individual under age 18.

848 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
849 claim against a local education agency for an injury resulting from a sexual battery or sexual
850 abuse committed against a student of a public school by a paid employee of the public school
851 who is criminally charged in connection with the sexual battery or sexual abuse, unless:

852 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a
853 code of conduct; and

854 (ii) before the sexual battery or sexual abuse occurred, the public school had:

855 (A) provided training on the code of conduct to the employee; and

856 (B) required the employee to sign a statement acknowledging that the employee has
857 read and understands the code of conduct.

858 (4) (a) As used in this Subsection (4):

859 (i) "Higher education institution" means an institution included within the state system
860 of higher education under Section 53B-1-102.

861 (ii) "Policy governing behavior" means a policy adopted by a higher education
862 institution or the Utah Board of Higher Education that:

863 (A) establishes a professional standard of care for preventing the conduct described in
864 Subsections (4)(a)(ii)(C) and (D);

865 (B) regulates behavior of a special trust employee toward a subordinate student;

866 (C) includes a prohibition against any sexual conduct between a special trust employee
867 and a subordinate student; and

868 (D) includes a prohibition against a special trust employee and subordinate student
869 sharing any sexually explicit or lewd communication, image, or photograph.

870 (iii) "Sexual battery" means the offense described in Section 76-9-702.1.

871 (iv) "Special trust employee" means an employee of a higher education institution who
872 is in a position of special trust, as defined in Section 76-5-404.1, with a higher education
873 student.

874 (v) "Subordinate student" means a student:

875 (A) of a higher education institution; and

876 (B) whose educational opportunities could be adversely impacted by a special trust
877 employee.

878 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
879 claim for an injury resulting from a sexual battery committed against a subordinate student by a
880 special trust employee, unless:

881 (i) the institution proves that the special trust employee's behavior that otherwise would
882 constitute a sexual battery was:

883 (A) with a subordinate student who was at least 18 years old at the time of the
884 behavior; and

885 (B) with the student's consent; or

886 (ii) (A) at the time of the sexual battery, the higher education institution was subject to
887 a policy governing behavior; and

888 (B) before the sexual battery occurred, the higher education institution had taken steps
889 to implement and enforce the policy governing behavior.

890 Section 11. Section 78A-4-103 is amended to read:

891 **78A-4-103. Court of Appeals jurisdiction.**

892 (1) As used in this section, [~~informal~~] "adjudicative proceeding" does not include a
893 proceeding under Title 63G, Chapter 2, Part 4, Appeals, that precedes judicial review under

894 Section 63G-2-404.

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

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

898 (b) in aid of its jurisdiction.

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

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

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

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

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

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

908 (A) the Public Service Commission;

909 (B) the State Tax Commission;

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

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

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

914 (F) the state engineer;

915 (b) appeals from the district court review of:

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

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

919 (c) appeals from the juvenile courts;

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

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

924 (f) appeals from orders on petitions for extraordinary writs sought by persons who are

925 incarcerated or serving any other criminal sentence, except petitions constituting a challenge to
926 a conviction of or the sentence for a first degree or capital felony;

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

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

933 (i) appeals from the Utah Military Court; and

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

935 (4) The Court of Appeals upon its own motion only and by the vote of four judges of
936 the court may certify to the Supreme Court for original appellate review and determination any
937 matter over which the Court of Appeals has original appellate jurisdiction.

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