

Representative Anthony E. Loubet proposes the following substitute bill:

GOVERNMENT RECORDS OMBUDSMAN AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Anthony E. Loubet

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions relating to government records.

Highlighted Provisions:

This bill:

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

▶ provides for an appeal of a fee waiver denial;

↔▶ repeals language making the State Records Committee a necessary party to a petition seeking judicial review of a decision of the State Records Committee; ←↔

▶ requires the government records ombudsman to certify the conclusion of certain mediations or to the lack of consent to mediation;

▶ requires a notice of a decision on appeal affirming an access denial or a fee waiver denial to include a statement relating to the requester's right to request mediation;

and

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

Money Appropriated in this Bill:

None

Other Special Clauses:



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

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

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

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

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

135 (i) a statement that the requester has a right under Section 63A-12-111 to request the
 136 government records ombudsman to mediate the dispute between the requester and the
 137 governmental entity concerning the access denial or the fee waiver denial;

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

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

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

143 ~~[(i)]~~ (iii) the time limits for filing an appeal described in Subsection (7)(b)(ii),
 144 including an explanation of a suspension of the time limits, as provided in Subsections
 145 63G-2-403(1)(c) and 63G-2-404(1)(b), for a requester if the requester seeks mediation under
 146 Section 63A-12-111; and

147 ~~[(i)]~~ (iv) the name and business address of:

148 (A) the executive secretary of the State Records Committee; ~~↔~~ **↔** ~~↔~~ **↔**

149 (B) the individual designated as the contact individual for the appeals board, if the

150 governmental entity is a political subdivision that has established an appeals board under
 151 Subsection 63G-2-701(5)(c) ~~H~~→ [:] ; and

151a **(C) the government records ombudsman.** ←~~H~~

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

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

158 Section 3. Section **63G-2-402** is amended to read:

159 **63G-2-402. Appealing a decision of a chief administrative officer.**

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

163 (a) (i) appeal the decision to the State Records Committee, as provided in Section
 164 63G-2-403; or

165 (ii) petition for judicial review of the decision in district court, as provided in Section
 166 63G-2-404; ~~or~~

167 (b) seek mediation of the access denial or fee waiver denial under Subsection
 168 63A-12-111(2)(c); or

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

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

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

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

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

179 Section 4. Section **63G-2-403** is amended to read:

180 **63G-2-403. Appeals to the State Records Committee.**

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

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

340 **63G-2-404. Judicial review.**

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

344 (b) The time for a requester to file a petition for judicial review under Subsection (1)(a)
345 is suspended for the period of time that:

346 (i) begins the date the requester submits a request under Section 63A-12-111 for the
347 government records ombudsman to mediate the dispute between the requester and the
348 governmental entity; and

349 (ii) ends the earlier of the following dates:

350 (A) the date that the government records ombudsman certifies in writing that the
351 mediation is concluded; or

352 (B) the date that the government records ombudsman certifies in writing that the
353 mediation did not occur or was not concluded because of a lack of the required consent; and

354 ~~H→ [(b)] (c) The State Records Committee is a necessary party to a petition for judicial~~
355 ~~review of a State Records Committee order.~~

356 ~~—— [(c)] (d) The executive secretary of the State Records Committee shall be served with~~
357 ~~notice of a petition for judicial review of a State Records Committee order, in accordance with~~
358 ~~the Utah Rules of Civil Procedure.] ←H~~

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

361 (i) the petitioner's name and mailing address;

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

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

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