

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;
 - ▶ 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:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **63A-12-111**, as last amended by Laws of Utah 2019, Chapter 254

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

30 **63G-2-402**, as last amended by Laws of Utah 2019, Chapter 254

31 **63G-2-403**, as last amended by Laws of Utah 2019, Chapter 254

32 **63G-2-404**, as last amended by Laws of Utah 2023, Chapter 516



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

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

36 **63A-12-111. Government records ombudsman.**

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

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

40 (2) (a) The government records ombudsman shall:

41 ~~[(a)]~~ (i) be familiar with the provisions of Title 63G, Chapter 2, Government Records
42 Access and Management Act;

43 ~~[(b)]~~ (ii) serve as a resource for a person who is making or responding to a records
44 request or filing an appeal relating to a records request;

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

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

50 ~~[(d)]~~ (iv) on an annual basis, electronically transmit a written report to the Government
51 Operations Interim Committee on the work performed by the government records ombudsman
52 during the previous year.

53 (b) (i) Before the conclusion of a mediation under Subsection (2)(a)(iii), a requester or
54 responder may withdraw consent for the mediation.

55 (ii) If a requester or responder withdraws consent under Subsection (2)(b)(i), the
56 government records ombudsman shall certify, as provided in Subsection (4)(a)(ii), that the

57 mediation was not concluded because of a lack of the required consent.

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

62 (4) Upon the conclusion of a mediation under Subsection (2)(a)(iii) or upon the
63 government records ombudsman's determination that the required consent for the mediation is
64 lacking, the government records ombudsman shall:

65 (a) certify in writing that the mediation:

66 (i) is concluded; or

67 (ii) did not take place or was not concluded because of a lack of the required consent;

68 and

69 (b) provide a copy of the written certification to the requester and the responder.

70 Section 2. Section 63G-2-401 is amended to read:

71 **63G-2-401. Appeal to chief administrative officer -- Notice of the decision of the**
72 **appeal.**

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

76 (i) for an access denial:

77 (A) the governmental entity sends a notice of denial under Section 63G-2-205, if the
78 governmental entity denies a record request under Subsection 63G-2-205(1); or

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

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

83 (b) If a governmental entity claims extraordinary circumstances and specifies the date
84 when the records will be available under Subsection 63G-2-204(4), and, if the requester
85 believes the extraordinary circumstances do not exist or that the date specified is unreasonable,
86 the requester may appeal the governmental entity's claim of extraordinary circumstances or date
87 for compliance to the chief administrative officer by filing a notice of appeal with the chief

88 administrative officer within 30 days after notification of a claim of extraordinary
89 circumstances by the governmental entity, despite the lack of a "determination" or its
90 equivalent under Subsection 63G-2-204(9).

91 (2) A notice of appeal shall contain:

92 (a) the name, mailing address, and daytime telephone number of the requester or
93 interested party; and

94 (b) the relief sought.

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

97 (4) (a) If the appeal involves a record that is the subject of a business confidentiality
98 claim under Section 63G-2-309, the chief administrative officer shall:

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

102 (ii) send notice of the business confidentiality claim and the schedule for the chief
103 administrative officer's determination to the requester or interested party within three business
104 days after receiving notice of the appeal.

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

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

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

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

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

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

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 ~~[(ii)]~~ (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 ~~[(iii)]~~ (iv) the name and business address of:

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

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\(5\)\(c\)](#).

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.](#)**

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

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

187 (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

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

189 (c) The time for a requester to file a notice of appeal under Subsection (1)(a) or (b) is
190 suspended for the period of time that:

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

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

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

197 (B) the date that the government records ombudsman certifies in writing that the
198 mediation did not occur or was not concluded because of a lack of the required consent.

199 (2) The notice of appeal shall:

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

202 (b) be accompanied by a copy of the decision being appealed; and

203 (c) state the relief sought.

204 (3) The records committee appellant:

205 (a) shall, on the day on which the notice of appeal is filed with the State Records
206 Committee, serve a copy of the notice of appeal on:

207 (i) the governmental entity whose access denial or fee waiver denial is the subject of
208 the appeal, if the records committee appellant is a requester or interested party; or

209 (ii) the requester or interested party who is a party to the local appeals board
210 proceeding that resulted in the decision that the political subdivision is appealing to the
211 committee, if the records committee appellant is a political subdivision; and

212 (b) may file a short statement of facts, reasons, and legal authority in support of the
213 appeal.

214 (4) (a) Except as provided in Subsections (4)(b) and (c), no later than seven business
215 days after receiving a notice of appeal, the executive secretary of the State Records Committee
216 shall:

217 (i) schedule a hearing for the State Records Committee to discuss the appeal at the next
218 regularly scheduled committee meeting falling at least 16 days after the date the notice of
219 appeal is filed but no longer than 64 calendar days after the date the notice of appeal was filed
220 except that the committee may schedule an expedited hearing upon application of the records
221 committee appellant and good cause shown;

222 (ii) send a copy of the notice of hearing to the records committee appellant; and

223 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing
224 to:

225 (A) each member of the State Records Committee;

226 (B) the records officer and the chief administrative officer of the governmental entity
227 whose access denial is the subject of the appeal, if the records committee appellant is a
228 requester or interested party;

229 (C) any person who made a business confidentiality claim under Section 63G-2-309 for
230 a record that is the subject of the appeal; and

231 (D) all persons who participated in the proceedings before the governmental entity's
232 chief administrative officer, if the appeal is of the chief administrative officer's decision
233 affirming an access denial.

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

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

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

243 (c) The executive secretary of the State Records Committee may schedule a hearing on
244 an appeal to the State Records Committee at a regularly scheduled State Records Committee
245 meeting that is later than the period described in Subsection (4)(a)(i) if that committee meeting
246 is the first regularly scheduled State Records Committee meeting at which there are fewer than
247 10 appeals scheduled to be heard.

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

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

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

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

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

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

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

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

268 (A) may review the disputed records; and

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

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

272 (b) Members of the State Records Committee may not disclose any information or
273 record reviewed by the committee in camera unless the disclosure is otherwise authorized by

274 this chapter.

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

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

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

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

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

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

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

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

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

291 (b) Except as provided in Section 63G-2-406, the State Records Committee may, upon
292 consideration and weighing of the various interests and public policies pertinent to the
293 classification and disclosure or nondisclosure, order the disclosure of information properly
294 classified as private, controlled, or protected if the public interest favoring access is greater
295 than or equal to the interest favoring restriction of access.

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

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

300 (ii) business confidentiality interests in the case of a record protected under Subsection
301 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

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

304 (a) a statement of reasons for the decision, including citations to this chapter, court rule

305 or order, another state statute, federal statute, or federal regulation that governs disclosure of
306 the record, if the citations do not disclose private, controlled, or protected information;

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

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

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

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

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

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

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

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

329 (i) produce the record; and

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

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

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

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

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 ~~[(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.

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

367 (v) a statement of the reasons why the petitioner is entitled to relief.

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

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

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

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

376 (6) (a) The court shall:

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

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

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

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

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

385 (A) involves access to a record; and

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

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

390 (7) (a) Except as provided in Section [63G-2-406](#), the court may, upon consideration
391 and weighing of the various interests and public policies pertinent to the classification and
392 disclosure or nondisclosure, order the disclosure of information properly classified as private,
393 controlled, or protected if the interest favoring access is greater than or equal to the interest
394 favoring restriction of access.

395 (b) The court shall consider and, where appropriate, limit the requester's use and
396 further disclosure of the record in order to protect privacy interests in the case of private or
397 controlled records, business confidentiality interests in the case of records protected under

398 Subsections [63G-2-305](#)(1) and (2), and privacy interests or the public interest in the case of
399 other protected records.

400 Section 6. **Effective date.**

401 This bill takes effect on May 1, 2024.