

# HB0266S01 compared with HB0266

~~text~~ shows text that was in HB0266 but was deleted in HB0266S01.

text shows text that was not in HB0266 but was inserted into HB0266S01.

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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: {}\_\_\_\_\_

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### 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

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- ▶ 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

### Utah Code Sections Affected:

#### AMENDS:

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

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

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

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

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

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

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

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

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

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

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

(b) The government records ombudsman may not be a member of the State Records

Committee created in Section 63G-2-501.

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

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

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

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

(c) (iii) upon a request from a requester or responder, and with the consent of both the requester and responder, mediate a dispute between a requester and responder, including a dispute between a requester and a governmental entity regarding the governmental entity's

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access denial, as defined in Section 63G-2-400.5; and

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

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

(ii) If a requester or responder withdraws consent under Subsection (2)(b)(i), the government records ombudsman shall certify, as provided in Subsection (4)(a)(ii), that the mediation was not concluded because of a lack of the required consent.

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

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

(a) certify in writing that the mediation:

(i) is concluded; or

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

and

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

Section 2. Section ~~{63G-2-203}~~ 63G-2-401 is amended to read:

~~{~~ ~~63G-2-203. Fees.~~

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

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

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

~~—— (i) the cost of staff time for compiling, formatting, manipulating, packaging;~~

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~~summarizing, or tailoring the record either into an organization or media to meet the person's request;~~

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

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

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

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

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

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

~~—— (ii) may use the procedures of Section 63J-1-504 to set fees until the Legislature establishes fees through the budget process.~~

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

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

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

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

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

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

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

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

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

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

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

~~—— (ii) inspecting a record; or~~

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

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

~~—— (i) is not a Utah media representative; and~~

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

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

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

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

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

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

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

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

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

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

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- ~~—— (i) fees are expected to exceed \$50; or~~
- ~~—— (ii) the requester has not paid fees from previous requests.~~
- ~~—— (b) Any prepaid amount in excess of fees due shall be returned to the requester.~~
- ~~—— (9) This section does not alter, repeal, or reduce fees established by other statutes or legislative acts.~~
- ~~—— (10) (a) Notwithstanding Subsection (3)(c), fees for voter registration records shall be set as provided in this Subsection (10):~~
- ~~—— (b) The lieutenant governor shall:~~
  - ~~—— (i) after consultation with county clerks, establish uniform fees for voter registration and voter history records that meet the requirements of this section; and~~
  - ~~—— (ii) obtain legislative approval of those fees by following the procedures and requirements of Section 63J-1-504.~~
- ~~—— Section 3. Section **63G-2-205** is amended to read:~~
- ~~—— **63G-2-205. Denials.**~~
  - ~~—— (1) If [the] a governmental entity denies [the] a record request, in whole or part, [it] the governmental entity shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.~~
  - ~~—— (2) The notice of denial shall contain the following information:~~
    - ~~—— (a) a description of the record or portions of the record to which access was denied; provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);~~
    - ~~—— (b) citations to the provisions of this chapter, court rule or order, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);~~
    - ~~—— (c) (i) a statement that the requester has the right to appeal the denial to the chief administrative officer of the governmental entity; and~~
    - ~~—— [(d)] (ii) the time limits for filing an appeal, and the name and business address of the chief administrative officer of the governmental entity[.]; and~~
    - ~~—— (d) a statement that the requester has a right under Section 63A-12-111 to request the government records ombudsman to mediate the dispute between the requester and the~~

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governmental entity:

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

~~— Section 4. Section 63G-2-401 is amended to read:~~

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

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

(i) for an access denial:

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

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

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

~~{ — (b) The time for a requester to file a notice of appeal under Subsection (1)(a) is suspended for the period of time that:~~

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

~~— (ii) ends the earliest of the following dates:~~

~~— (A) the date that the government records ombudsman certifies in writing that the mediation is concluded;~~

~~— (B) the date that the government records ombudsman certifies in writing that the mediation did not occur because of a lack of consent to the mediation; and~~

~~— (C) the date that is 30 days after the date described in Subsection (1)(b)(i):~~

‡ ~~{(b)}(c)~~ If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63G-2-204(4), and, if the

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requester believes the extraordinary circumstances do not exist or that the date specified is unreasonable, the requester may appeal the governmental entity's claim of extraordinary circumstances or date for compliance to the chief administrative officer by filing a notice of appeal with the chief administrative officer within 30 days after notification of a claim of extraordinary circumstances by the governmental entity, despite the lack of a "determination" or its equivalent under Subsection 63G-2-204(9).

(2) A notice of appeal shall contain:

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

(b) the relief sought.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~— (b) } [or]~~

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

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

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

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

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

(3) As provided in Section 63G-2-403, an interested party may appeal to the State

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Records Committee a chief administrative officer's decision under Section 63G-2-401 affirming an access denial.

Section ~~5~~4. Section **63G-2-403** is amended to read:

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

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

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

- (i) the circumstances described in Subsection 63G-2-401(1)~~(b)~~~~(c)~~ occur; and
- (ii) the chief administrative officer fails to make a decision under Section 63G-2-401.

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

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

(ii) ends the earlier of the following dates:

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

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

(2) The notice of appeal shall:

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

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

(c) state the relief sought.

(3) The records committee appellant:

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

(i) the governmental entity whose access denial or fee waiver denial is the subject of

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the appeal, if the records committee appellant is a requester or interested party; or

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

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

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

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

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

(iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing

to:

(A) each member of the State Records Committee;

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

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

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

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

(ii) (A) If the executive secretary of the State Records Committee declines to schedule

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a hearing, the executive secretary shall send a notice to the records committee appellant indicating that the request for hearing has been denied and the reason for the denial.

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

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

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

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

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

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

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

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

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

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

(A) may review the disputed records; and

(B) shall review the disputed records, if the committee is weighing the various interests

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under Subsection (11).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) business confidentiality interests in the case of a record protected under Subsection

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63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

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

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

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

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

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

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

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

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

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

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

(i) produce the record; and

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

(d) (i) If the governmental entity that is ordered to produce a record fails to file a notice

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of compliance or a notice of intent to appeal, the State Records Committee may do either or both of the following:

- (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or
- (B) send written notice of the governmental entity's noncompliance to the governor.

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

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

### 63G-2-404. Judicial review.

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

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

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

(ii) ends the earlier of the following dates:

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

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

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

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

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

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

(ii) a copy of the State Records Committee order from which the appeal is taken, if the



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petitioner is seeking judicial review of an order of the State Records Committee;

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

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

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

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

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

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

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

(6) (a) The court shall:

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

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

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

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

if:

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

(A) involves access to a record; and

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

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

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

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favoring restriction of access.

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

Section 6. **Effective date.**

This bill takes effect on May 1, 2024.