

1 **GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT**

2 **AMENDMENTS**

3 2024 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis S. Bramble**

6 House Sponsor: _____

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies a provision of the Government Records Access and Management Act
11 related to the awarding of an attorney fee and costs in a judicial review.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ authorizes a court to award an attorney fee and costs against a person, other than a
15 governmental entity or political subdivision, that opposes disclosure of a record, if
16 the requester substantially prevails; and

17 ▶ modifies a provision limiting an award of an attorney fee and costs to those incurred
18 after a specified period.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **63G-2-802**, as last amended by Laws of Utah 2022, Chapter 388

26

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



28 Section 1. Section **63G-2-802** is amended to read:

29 **63G-2-802. Injunction -- Attorney fees and costs.**

30 (1) As used in this section, "defending party" means:

31 (a) a governmental entity or political subdivision:

32 (i) whose access denial is the subject of a petition for judicial review under Section
33 63G-2-404; and

34 (ii) that defends the access denial in an action for judicial review under Section
35 63G-2-404; or

36 (b) a person, other than the governmental entity or political subdivision described in
37 Subsection (1)(a), that participates in the action for judicial review to oppose disclosure of the
38 record that is the subject of judicial review.

39 (2) A district court in this state may enjoin any governmental entity or political
40 subdivision that violates or proposes to violate the provisions of this chapter.

41 ~~[(2)]~~ (3) (a) A district court may assess against [any governmental entity or political
42 subdivision] a defending party reasonable attorney fees and costs reasonably incurred in
43 connection with a judicial appeal to determine whether a requester is entitled to access to
44 records under a records request, if the requester substantially prevails.

45 (b) In determining whether to award attorney fees or costs under this section, the court
46 shall consider:

47 (i) the public benefit derived from the case;

48 (ii) the nature of the requester's interest in the records; and

49 (iii) whether the [governmental entity's or political subdivision's] defending party's
50 actions had a reasonable basis.

51 (c) Attorney fees and costs shall not ordinarily be awarded if the purpose of the
52 litigation is primarily to benefit the requester's financial or commercial interest.

53 ~~[(3)]~~ (4) Neither attorney fees nor costs may be awarded for fees or costs incurred
54 during administrative proceedings.

55 ~~[(4)]~~ (5) Notwithstanding Subsection ~~[(2)]~~ (3), a court may [only] award attorney fees
56 and costs incurred in connection with appeals to district courts under Subsection 63G-2-404(2)
57 only if the attorney fees and costs were incurred 20 or more days after the requester provided
58 [to the governmental entity or political subdivision a statement of position that adequately

59 ~~explains the basis for the requester's position]:~~

60 (a) an adequate explanation of the basis for the requester's position, regardless of how
61 the explanation is communicated or whether the explanation is a part of or outside an
62 administrative or court proceeding; and

63 (b) to the governmental entity, political subdivision, or other person against which the
64 requester seeks an award of attorney fees and costs.

65 ~~[(5)]~~ (6) Except for the waiver of immunity in Subsection [63G-7-301\(2\)\(e\)](#), a claim for
66 attorney fees or costs as provided in this section is not subject to Chapter 7, Governmental
67 Immunity Act of Utah.

68 Section 2. **Effective date.**

69 This bill takes effect on May 1, 2024.