

2014 General Session of the Utah Legislature

Bills Affecting Title 63G Chapter 2 (Government Records Access and Management Act)

HB0082 Request for Legislation Amendments	<i>Powell</i>	provides that information on a request for legislation form that identifies the name of the legislator submitting the form, the date the form is submitted, and the short title assigned to the requested legislation is public information, even if the legislator requests that the form otherwise remain protected	Modifies Subsection 63-G-2-305 (20)
HB0109 Expungement of Administrative Action	<i>Greene</i>	provides that agency records may be classified as protected under certain circumstances	Adds Subsection 63-G-2-305 (65)
HB0155 Revisor's - Technical Corrections	<i>Dunnigan</i>	modifies parts of the Utah Code to make technical corrections	Modifies Subsection 63-G-2-202(11)(a) making employment records accessible only with a court order *, modifies Subsection 63G-2-703, correcting citation for State Archives Statute to 63A-12
HB0184 Victim Restitution Amendments	<i>Wilson</i>	makes a victim's application for and receipt of reparations protected records under GRAMA	Adds Subsection 63-G-2-305 (65)
HB0251 Amendments to the Interlocal Act	<i>Anderson</i>	authorizes a Utah public agency to exercise, with certain limitations, a power, privilege, or authority with any other Utah public agency	Adds Subsection 63G-2-103(11)(b)(iii), making interlocal agencies a governmental entity under GRAMA
HB0306 Fees for Government Records Requests	<i>King</i>	Fees for Government Records Requests	Adds Subsection 63G-2-204(6)(b)(i), clarifying the SRC's responsibility to review fee waivers independent of governmental entity responses
SB0018 Governor's Office of Economic Development Revisions	<i>Osmond</i>	Modifies provisions of GOED	Modifies cross-reference in Subsection 63G-2-305

SB0157 Government Records Access and Management Act Amendments	<i>Bramble</i>	modifies the process of appealing the denial of a record request; eliminates the right of direct appeal to district court of a chief administrative officer decision affirming a denial of a record request; and eliminates appeals to political subdivision appeals boards for appeals of record request denials	Modifies Sections 63G-2-202, 63G-2-401, 63G-2-402, 63G-2-404, 63G-2-406, 63G-2-701, 63G-2-802 eliminating all appeals process to district court except from the State Records Committee*
SB0159 Background Checks for State Accountants	<i>Henderson</i>	Classifies the background check or credit history report as a private record	Adds Subsection 63G-2-302(1)(v)

Bills Affecting Title 63A Chapter 12 (Public Records Management Act)

SB0103 Child Welfare Amendments	<i>Harper</i>	adds a child interview to the definition of "record" for purposes of the Public Records Management Act	Adds Subsection 63A-12-100.5(20)(b) making CJC interviews a record for management but not for access
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1 **GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT**

2 **AMENDMENTS**

3 2015 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 the Government Records Access and Management Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ modifies the process of appealing the denial of a record request;
- 14 ▶ eliminates the right of direct appeal to district court of a chief administrative officer
- 15 decision affirming a denial of a record request; and
- 16 ▶ eliminates appeals to political subdivision appeals boards for appeals of record

17 request denials.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

- 24 **53B-16-303**, as last amended by Laws of Utah 2008, Chapter 382
- 25 **63G-2-202**, as last amended by Laws of Utah 2014, Chapter 373
- 26 **63G-2-401**, as last amended by Laws of Utah 2012, Chapter 377
- 27 **63G-2-402**, as renumbered and amended by Laws of Utah 2008, Chapter 382

S.B. 157



- 28 **63G-2-404**, as last amended by Laws of Utah 2012, Chapter 377
 - 29 **63G-2-406**, as last amended by Laws of Utah 2013, Chapter 445
 - 30 **63G-2-701**, as last amended by Laws of Utah 2009, Chapter 131
 - 31 **63G-2-802**, as renumbered and amended by Laws of Utah 2008, Chapter 382
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33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **53B-16-303** is amended to read:

35 **53B-16-303. Access to restricted records.**

36 Notwithstanding any other provision of Title 63G, Chapter 2, Government Records
37 Access and Management Act, access to records restricted by this part shall only be permitted
38 upon:

39 (1) written consent of the public institution of higher education originating, receiving,
40 or maintaining such records; or

41 (2) a finding by the State Records Committee or a court that the record has not been
42 properly classified as restricted under Section **63G-2-302**, provided that the review of a
43 restricted classification of a record shall not include considerations of weighing public and
44 private interests regarding access to a properly classified record as contained in Subsection
45 **63G-2-403(11)(b)** or **63G-2-404~~(8)~~(7)** or Section **63G-2-309**. Nothing in this Subsection (2)
46 shall be construed to limit the authority of the State Board of Regents to reclassify and disclose
47 a record of a public institution of higher education.

48 Section 2. Section **63G-2-202** is amended to read:

49 **63G-2-202. Access to private, controlled, and protected documents.**

50 (1) Upon request, and except as provided in Subsection (11)(a), a governmental entity
51 shall disclose a private record to:

52 (a) the subject of the record;

53 (b) the parent or legal guardian of an unemancipated minor who is the subject of the
54 record;

55 (c) the legal guardian of a legally incapacitated individual who is the subject of the
56 record;

57 (d) any other individual who:

58 (i) has a power of attorney from the subject of the record;

59 (ii) submits a notarized release from the subject of the record or the individual's legal
60 representative dated no more than 90 days before the date the request is made; or

61 (iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a
62 health care provider, as defined in Section 26-33a-102, if releasing the record or information in
63 the record is consistent with normal professional practice and medical ethics; or

64 (e) any person to whom the record must be provided pursuant to:

65 (i) court order as provided in Subsection (7); or

66 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

67 Powers.

68 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:

69 (i) a physician, psychologist, certified social worker, insurance provider or producer, or
70 a government public health agency upon submission of:

71 (A) a release from the subject of the record that is dated no more than 90 days prior to
72 the date the request is made; and

73 (B) a signed acknowledgment of the terms of disclosure of controlled information as
74 provided by Subsection (2)(b); and

75 (ii) any person to whom the record must be disclosed pursuant to:

76 (A) a court order as provided in Subsection (7); or

77 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

78 Powers.

79 (b) A person who receives a record from a governmental entity in accordance with
80 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,
81 including the subject of the record.

82 (3) If there is more than one subject of a private or controlled record, the portion of the
83 record that pertains to another subject shall be segregated from the portion that the requester is
84 entitled to inspect.

85 (4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental
86 entity shall disclose a protected record to:

87 (a) the person who submitted the record;

88 (b) any other individual who:

89 (i) has a power of attorney from all persons, governmental entities, or political

90 subdivisions whose interests were sought to be protected by the protected classification; or
91 (ii) submits a notarized release from all persons, governmental entities, or political
92 subdivisions whose interests were sought to be protected by the protected classification or from
93 their legal representatives dated no more than 90 days prior to the date the request is made;
94 (c) any person to whom the record must be provided pursuant to:
95 (i) a court order as provided in Subsection (7); or
96 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
97 Powers; or
98 (d) the owner of a mobile home park, subject to the conditions of Subsection
99 41-1a-116(5).
100 (5) A governmental entity may disclose a private, controlled, or protected record to
101 another governmental entity, political subdivision, another state, the United States, or a foreign
102 government only as provided by Section 63G-2-206.
103 (6) Before releasing a private, controlled, or protected record, the governmental entity
104 shall obtain evidence of the requester's identity.
105 (7) A governmental entity shall disclose a record pursuant to the terms of a court order
106 signed by a judge from a court of competent jurisdiction, provided that:
107 (a) the record deals with a matter in controversy over which the court has jurisdiction;
108 (b) the court has considered the merits of the request for access to the record;
109 (c) the court has considered and, where appropriate, limited the requester's use and
110 further disclosure of the record in order to protect:
111 (i) privacy interests in the case of private or controlled records;
112 (ii) business confidentiality interests in the case of records protected under Subsection
113 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and
114 (iii) privacy interests or the public interest in the case of other protected records;
115 (d) to the extent the record is properly classified private, controlled, or protected, the
116 interests favoring access, considering limitations thereon, are greater than or equal to the
117 interests favoring restriction of access; and
118 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection
119 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.
120 (8) (a) Except as provided in Subsection (8)(d), a governmental entity may disclose or

121 authorize disclosure of private or controlled records for research purposes if the governmental
122 entity:

123 (i) determines that the research purpose cannot reasonably be accomplished without
124 use or disclosure of the information to the researcher in individually identifiable form;

125 (ii) determines that:

126 (A) the proposed research is bona fide; and

127 (B) the value of the research is greater than or equal to the infringement upon personal
128 privacy;

129 (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of
130 the records; and

131 (B) requires the removal or destruction of the individual identifiers associated with the
132 records as soon as the purpose of the research project has been accomplished;

133 (iv) prohibits the researcher from:

134 (A) disclosing the record in individually identifiable form, except as provided in
135 Subsection (8)(b); or

136 (B) using the record for purposes other than the research approved by the governmental
137 entity; and

138 (v) secures from the researcher a written statement of the researcher's understanding of
139 and agreement to the conditions of this Subsection (8) and the researcher's understanding that
140 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution
141 under Section [63G-2-801](#).

142 (b) A researcher may disclose a record in individually identifiable form if the record is
143 disclosed for the purpose of auditing or evaluating the research program and no subsequent use
144 or disclosure of the record in individually identifiable form will be made by the auditor or
145 evaluator except as provided by this section.

146 (c) A governmental entity may require indemnification as a condition of permitting
147 research under this Subsection (8).

148 (d) A governmental entity may not disclose or authorize disclosure of a private record
149 for research purposes as described in this Subsection (8) if the private record is a record
150 described in Subsection [63G-2-302\(1\)\(u\)](#).

151 (9) (a) Under Subsections [63G-2-201\(5\)\(b\)](#) and [63G-2-401\(6\)](#), a governmental entity

152 may disclose to persons other than those specified in this section records that are:

153 (i) private under Section 63G-2-302; or

154 (ii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for
155 business confidentiality has been made under Section 63G-2-309.

156 (b) Under Subsection 63G-2-403(11)(b), the records committee may require the
157 disclosure to persons other than those specified in this section of records that are:

158 (i) private under Section 63G-2-302;

159 (ii) controlled under Section 63G-2-304; or

160 (iii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for
161 business confidentiality has been made under Section 63G-2-309.

162 (c) Under Subsection 63G-2-404[(8)](7), the court may require the disclosure of
163 records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or
164 protected under Section 63G-2-305 to persons other than those specified in this section.

165 (10) A record contained in the Management Information System, created in Section
166 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be
167 disclosed to any person except the person who is alleged in the report to be a perpetrator of
168 abuse, neglect, or dependency.

169 (11) (a) A private record described in Subsection 63G-2-302(2)(g) may only be
170 disclosed as provided in Subsection (1)(e).

171 (b) A protected record described in Subsection 63G-2-305(43) may only be disclosed
172 as provided in Subsection (4)(c) or Section 62A-3-312.

173 (12) (a) A private, protected, or controlled record described in Section 62A-16-301
174 shall be disclosed as required under:

175 (i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and

176 (ii) Subsections 62A-16-302(1) and (6).

177 (b) A record disclosed under Subsection (12)(a) shall retain its character as private,
178 protected, or controlled.

179 Section 3. Section 63G-2-401 is amended to read:

180 **63G-2-401. Appeal to head of governmental entity.**

181 (1) (a) Any person aggrieved by a governmental entity's access determination under
182 this chapter, including a person not a party to the governmental entity's proceeding, may appeal

183 the determination within 30 days to the chief administrative officer of the governmental entity
184 by filing a notice of appeal.

185 (b) If a governmental entity claims extraordinary circumstances and specifies the date
186 when the records will be available under Subsection 63G-2-204(3), and, if the requester
187 believes the extraordinary circumstances do not exist or that the time specified is unreasonable,
188 the requester may appeal the governmental entity's claim of extraordinary circumstances or date
189 for compliance within 30 days after notification of a claim of extraordinary circumstances by
190 the governmental entity, despite the lack of a "determination" or its equivalent under
191 Subsection 63G-2-204[(7)](8).

192 (2) The notice of appeal shall contain the following information:

193 (a) the petitioner's name, mailing address, and daytime telephone number; and

194 (b) the relief sought.

195 (3) The petitioner may file a short statement of facts, reasons, and legal authority in
196 support of the appeal.

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

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

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

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

207 (5) (a) The chief administrative officer shall make a determination on the appeal within
208 the following period of time:

209 (i) within five business days after the chief administrative officer's receipt of the notice
210 of appeal; or

211 (ii) within 12 business days after the governmental entity sends the requester's notice of
212 appeal to a person who submitted a claim of business confidentiality.

213 (b) If the chief administrative officer fails to make a determination within the time

214 specified in Subsection (5)(a), the failure shall be considered the equivalent of an order denying
215 the appeal.

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

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

224 (7) The governmental entity shall send written notice of the determination of the chief
225 administrative officer to all participants. If the chief administrative officer affirms the denial in
226 whole or in part, the denial shall include a statement that the requester has the right to appeal
227 the denial to ~~[either]~~ the records committee ~~[or district court]~~ as provided in Section
228 [63G-2-402](#), the time limits for filing an appeal, and the name and business address of the
229 executive secretary of the records committee.

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

235 (9) The duties of the chief administrative officer under this section may be delegated.
236 Section 4. Section [63G-2-402](#) is amended to read:

237 **[63G-2-402. Option for appealing a denial.](#)**

238 (1) If the chief administrative officer of a governmental entity denies a records request
239 under Section [63G-2-401](#), the requester may~~[:(a)]~~ appeal the denial to the records committee
240 as provided in Section [63G-2-403](#)~~[:or]~~.

241 ~~[(b) petition for judicial review in district court as provided in Section [63G-2-404](#).]~~

242 (2) Any person aggrieved by a determination of the chief administrative officer of a
243 governmental entity under this chapter, including persons who did not participate in the
244 governmental entity's proceeding, may appeal the determination to the records committee as

245 provided in Section 63G-2-403.

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

247 **63G-2-404. Judicial review.**

248 (1) (a) Any party to a proceeding before the records committee may petition for judicial
249 review by the district court of the records committee's order.

250 (b) The petition shall be filed no later than 30 days after the date of the records
251 committee's order.

252 (c) The records committee is a necessary party to the petition for judicial review.

253 (d) The executive secretary of the records committee shall be served with notice of the
254 petition in accordance with the Utah Rules of Civil Procedure.

255 ~~[(2) (a) A requester may petition for judicial review by the district court of a
256 governmental entity's determination as specified in Subsection 63G-2-402(1)(b).]~~

257 ~~[(b) The requester shall file a petition no later than:]~~

258 ~~[(i) 30 days after the governmental entity has responded to the records request by either
259 providing the requested records or denying the request in whole or in part;]~~

260 ~~[(ii) 35 days after the original request if the governmental entity failed to respond to the
261 request; or]~~

262 ~~[(iii) 45 days after the original request for records if:]~~

263 ~~[(A) the circumstances described in Subsection 63G-2-401(1)(b) occur; and]~~

264 ~~[(B) the chief administrative officer failed to make a determination under Section
265 63G-2-401.]~~

266 ~~[(3)]~~ (2) The petition for judicial review shall be a complaint governed by the Utah
267 Rules of Civil Procedure and shall contain:

268 (a) the petitioner's name and mailing address;

269 (b) a copy of the records committee order from which the appeal is taken~~[-if the
270 petitioner brought a prior appeal to the records committee];~~

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

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

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

275 ~~[(4)]~~ (3) If the appeal is based on the denial of access to a protected record, the court

276 shall allow the claimant of business confidentiality to provide to the court the reasons for the
277 claim of business confidentiality.

278 ~~[(5)]~~ (4) All additional pleadings and proceedings in the district court are governed by
279 the Utah Rules of Civil Procedure.

280 ~~[(6)]~~ (5) The district court may review the disputed records. The review shall be in
281 camera.

282 ~~[(7)]~~ (6) The court shall:

283 (a) make its decision de novo, but allow introduction of evidence presented to the
284 records committee;

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

286 (c) decide the issue at the earliest practical opportunity.

287 ~~[(8)]~~ (7) (a) Except as provided in Section 63G-2-406, the court may, upon
288 consideration and weighing of the various interests and public policies pertinent to the
289 classification and disclosure or nondisclosure, order the disclosure of information properly
290 classified as private, controlled, or protected if the interest favoring access is greater than or
291 equal to the interest favoring restriction of access.

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

297 Section 6. Section 63G-2-406 is amended to read:

298 **63G-2-406. Evidentiary standards for release of certain enforcement and**
299 **litigation records.**

300 (1) A record that is classified as protected under Subsection 63G-2-305(10), (17), (18),
301 (23), (24), or (33) may be ordered to be disclosed under the provisions of Subsection
302 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404~~[(8)]~~(7)(a) only if the person or party seeking
303 disclosure of the record has established, by a preponderance of the evidence, that the public
304 interest favoring access is equal to or greater than the interest favoring restriction of access.

305 (2) A record that is classified as protected under Subsection 63G-2-305(11) may be
306 ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or

307 63G-2-404[(8)](7) only if the person or party seeking disclosure of the record has established,
308 by clear and convincing evidence, that the public interest favoring access is equal to or greater
309 than the interest favoring restriction of access.

310 Section 7. Section 63G-2-701 is amended to read:

311 **63G-2-701. Political subdivisions may adopt ordinances in compliance with**
312 **chapter.**

313 (1) (a) Each political subdivision may adopt an ordinance or a policy applicable
314 throughout its jurisdiction relating to information practices including classification,
315 designation, access, denials, segregation, appeals, management, retention, and amendment of
316 records.

317 (b) The ordinance or policy shall comply with the criteria set forth in this section.

318 (c) If any political subdivision does not adopt and maintain an ordinance or policy, then
319 that political subdivision is subject to this chapter.

320 (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision
321 is subject to Parts 1 and 3, and Sections 63A-12-105, 63A-12-107, 63G-2-201, 63G-2-202,
322 63G-2-205, 63G-2-206, 63G-2-601, and 63G-2-602.

323 (e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed
324 with the state archives no later than 30 days after its effective date.

325 (f) The political subdivision shall also report to the state archives all retention
326 schedules, and all designations and classifications applied to record series maintained by the
327 political subdivision.

328 (g) The report required by Subsection (1)(f) is notification to state archives of the
329 political subdivision's retention schedules, designations, and classifications. The report is not
330 subject to approval by state archives. If state archives determines that a different retention
331 schedule is needed for state purposes, state archives shall notify the political subdivision of the
332 state's retention schedule for the records and shall maintain the records if requested to do so
333 under Subsection 63A-12-105(2).

334 (2) Each ordinance or policy relating to information practices shall:

335 (a) provide standards for the classification and designation of the records of the
336 political subdivision as public, private, controlled, or protected in accordance with Part 3 of
337 this chapter;

338 (b) require the classification of the records of the political subdivision in accordance
339 with those standards;

340 (c) provide guidelines for establishment of fees in accordance with Section 63G-2-203;
341 and

342 (d) provide standards for the management and retention of the records of the political
343 subdivision comparable to Section 63A-12-103.

344 (3) (a) Each ordinance or policy shall establish access criteria, procedures, and
345 response times for requests to inspect, obtain, or amend records of the political subdivision,
346 and time limits for appeals consistent with this chapter.

347 (b) In establishing response times for access requests and time limits for appeals, the
348 political subdivision may establish reasonable time frames different than those set out in
349 Section 63G-2-204 and Part 4 of this chapter if it determines that the resources of the political
350 subdivision are insufficient to meet the requirements of those sections.

351 (4) (a) The political subdivision shall establish an appeals process for persons
352 aggrieved by classification, designation or access decisions.

353 (b) The policy or ordinance shall provide for~~[(i) (A) an appeals board composed of~~
354 ~~the governing body of the political subdivision; or (B) a separate appeals board composed of~~
355 ~~members of the governing body and the public, appointed by the governing body; and (ii)]~~ the
356 designation of a person as the chief administrative officer for purposes of determining appeals
357 under Section 63G-2-401 of the governmental entity's determination.

358 ~~[(5) If the requester concurs, the political subdivision may also provide for an~~
359 ~~additional level of administrative review to the records committee in accordance with Section~~
360 ~~63G-2-403.]~~

361 ~~[(6) Appeals of the decisions of the appeals boards established by political subdivisions~~
362 ~~shall be by petition for judicial review to the district court.]~~

363 (5) (a) An appeal of the chief administrative officer shall be to the records committee
364 as provided in Section 63G-2-402.

365 (b) The contents of the ~~[petition for review]~~ notice of appeal and the conduct of the
366 proceeding before the records committee shall be in accordance with ~~[Sections 63G-2-402 and~~
367 ~~63G-2-404]~~ Section 63G-2-403.

368 ~~[(7)]~~ (6) Any political subdivision that adopts an ordinance or policy under Subsection

369 (1) shall forward to state archives a copy and summary description of the ordinance or policy.

370 Section 8. Section 63G-2-802 is amended to read:

371 **63G-2-802. Injunction -- Attorney fees.**

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

374 (2) (a) A district court may assess against any governmental entity or political
375 subdivision reasonable attorney fees and other litigation costs reasonably incurred in
376 connection with a judicial appeal of a denial of a records request if the requester substantially
377 prevails.

378 (b) In determining whether to award attorneys' fees under this section, the court shall
379 consider:

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

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

382 (iii) whether the governmental entity's or political subdivision's actions had a
383 reasonable basis.

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

386 (3) Neither attorney fees nor costs shall be awarded for fees or costs incurred during
387 administrative proceedings.

388 ~~[(4) Notwithstanding Subsection (2), a court may only award fees and costs incurred in
389 connection with appeals to district courts under Subsection 63G-2-404(2) if the fees and costs
390 were incurred 20 or more days after the requester provided to the governmental entity or
391 political subdivision a statement of position that adequately explains the basis for the
392 requester's position.]~~

393 ~~[(5)]~~ (4) Claims for attorney fees as provided in this section or for damages are subject
394 to Title 63G, Chapter 7, Governmental Immunity Act of Utah.

Legislative Review Note
as of 2-4-15 9:04 AM

Office of Legislative Research and General Counsel

1 **FEES FOR GOVERNMENT RECORDS REQUESTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brian S. King**

5 Senate Sponsor: _____

6

LONG TITLE

7 **General Description:**

8 This bill modifies provisions of the Government Records Access and Management Act
9 relating to fees charged for record requests.

10 **Highlighted Provisions:**

11 This bill:

- 12 ► provides for de novo review of an appeal of a fee waiver request.

13 **Money Appropriated in this Bill:**

14 None

15 **Other Special Clauses:**

16 None

17 **Utah Code Sections Affected:**

18 AMENDS:

19 **63G-2-203**, as last amended by Laws of Utah 2009, Chapter 183

20

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

21 Section 1. Section **63G-2-203** is amended to read:

22 **63G-2-203. Fees.**

23 (1) A governmental entity may charge a reasonable fee to cover the governmental
24 entity's actual cost of providing a record. This fee shall be approved by the governmental
25 entity's executive officer.
26
27



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

31 (i) the cost of staff time for compiling, formatting, manipulating, packaging,
32 summarizing, or tailoring the record either into an organization or media to meet the person's
33 request;

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

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

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

44 (c) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first
45 quarter hour of staff time.

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

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

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

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

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

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

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

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

58 (b) the individual requesting the record is the subject of the record, or an individual

59 specified in Subsection 63G-2-202(1) or (2); or

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

62 (5) A governmental entity may not charge a fee for:

63 (a) reviewing a record to determine whether it is subject to disclosure, except as
64 permitted by Subsection (2)(a)(ii); or

65 (b) inspecting a record.

66 (6) (a) A person who believes that there has been an unreasonable denial of a fee
67 waiver under Subsection (4) may appeal the denial in the same manner as a person appeals
68 when inspection of a public record is denied under Section 63G-2-205.

69 (b) The adjudicative body hearing the appeal:

70 (i) shall review the fee waiver de novo; and

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

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

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

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

79 (i) fees are expected to exceed \$50; or

80 (ii) the requester has not paid fees from previous requests.

81 (b) Any prepaid amount in excess of fees due shall be returned to the requester.

82 (9) This section does not alter, repeal, or reduce fees established by other statutes or
83 legislative acts.

84 (10) (a) Notwithstanding Subsection (3)(c), fees for voter registration records shall be
85 set as provided in this Subsection (10).

86 (b) The lieutenant governor shall:

87 (i) after consultation with county clerks, establish uniform fees for voter registration
88 and voter history records that meet the requirements of this section; and

89 (ii) obtain legislative approval of those fees by following the procedures and

90 requirements of Section 63J-1-504.

Legislative Review Note
as of 10-15-14 9:22 AM

Office of Legislative Research and General Counsel

Section 63G-2-403 is amended to read:

63G-2-403. Appeals to the records committee.

- (1) A petitioner, including an aggrieved person who did not participate in the appeal to the governmental entity's chief administrative officer, may appeal to the records committee by filing a notice of appeal with the executive secretary no later than:
 - (a) 30 days after the day on which the chief administrative officer of the governmental entity grants or denies the record request in whole or in part, including a denial under Subsection 63G-2-204(8);
 - (b) 45 days after the day on which the original request for a record is made if:
 - (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and
 - (ii) the chief administrative officer failed to make a determination under Section 63G-2-401.
- (2) The notice of appeal shall contain the following information:
 - (a) the petitioner's name, mailing address, and daytime telephone number;
 - (b) a copy of any denial of the record request; and
 - (c) the relief sought.
- (3) The petitioner:
 - (a) shall, on the day on which the petitioner files an appeal to the records committee, serve a copy of the appeal on the government entity, described in Subsection (1), to which the appeal relates; and
 - (b) may file a short statement of facts, reasons, and legal authority in support of the appeal.
- (4) (a) Except as provided in Subsection (4)(b), no later than ~~five~~seven business days after receiving a notice of appeal, the executive secretary of the records committee shall:
 - (i) schedule a hearing for the records committee to discuss the appeal at the next regularly scheduled committee meeting falling at least ~~14~~16 days after the date the notice of appeal is filed but no longer than ~~52~~64 calendar days after the date the notice of appeal was filed except that the records committee may schedule an expedited hearing upon application of the petitioner and good cause shown;
 - (ii) send a copy of the notice of hearing to the petitioner; and
 - (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:
 - (A) each member of the records committee;
 - (B) the records officer and the chief administrative officer of the governmental entity from which the appeal originated;
 - (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.

- (b) (i) The executive secretary of the 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 government entity to be appropriately classified as private, controlled, or protected.
 - (ii) (A) If the executive secretary of the records committee declines to schedule a hearing, the executive secretary of the records committee shall send a notice to the petitioner indicating that the request for hearing has been denied and the reason for the denial.
 - (B) The committee shall make rules to implement this section as provided by [Title 63G, Chapter 3, Utah Administrative Rulemaking Act](#).
- (5) (a) A written statement of facts, reasons, and legal authority in support of the governmental entity's position must be submitted to the executive secretary of the records committee not later than five business days before the hearing.
- (b) The governmental entity shall send a copy of the written statement to the petitioner by first class mail, postage prepaid. The executive secretary shall forward a copy of the written statement to each member of the records committee.
- (6) (a) No later than 10 business days after the notice of appeal is sent by the executive secretary, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the 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 records committee.
- (7) The records committee shall hold a hearing within the period of time described in Subsection (4).
- (8) At the hearing, the records committee shall allow the parties to testify, present evidence, and comment on the issues. The records committee may allow other interested persons to comment on the issues.
- (9) (a) The records committee may review the disputed records. However, if the committee is weighing the various interests under Subsection (11), the committee must review the disputed records. The review shall be in camera.
- (b) Members of the 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 records committee may issue subpoenas or other orders to compel production of necessary evidence.
- (b) When the subject of a records committee subpoena disobeys or fails to comply with the subpoena, the records committee may file a motion for an order to compel obedience to the subpoena with the district court.
- (c) The records committee's review shall be de novo.

- (11) (a) No later than seven business days after the hearing, the records committee shall issue a signed order either granting the petition in whole or in part or upholding the determination of the governmental entity in whole or in part.
- (b) Except as provided in Section 63G-2-406, the 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 records committee shall consider and, where appropriate, limit the requester'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 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 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, provided that 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, provided that 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 records committee may appeal the records 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 records committee fails to issue a decision within ~~57~~73 calendar days of the filing of the notice of appeal, that failure shall be considered the equivalent of an order denying the appeal. The petitioner shall notify the records committee in writing if the petitioner considers the appeal denied.
- (14) (a) Unless a notice of intent to appeal is filed under Subsection (14)(b), each party to the proceeding shall comply with the order of the records committee.
- (b) If a party disagrees with the order of the records committee, that party may file a notice of intent to appeal the order of the records committee.
- (c) If the 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 records committee.
- (d) (i) If the governmental entity that is ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the 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:
 - (I) the governor for executive branch entities;
 - (II) the Legislative Management Committee for legislative branch entities;
 - and
 - (III) the Judicial Council for judicial branch agencies entities.
- (ii) In imposing a civil penalty, the 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.

State Records Committee Appeal Requests Heard (21)

	State Agency	Local	Judiciary
	6 Utah Dept. of Corrections	1 Bluffdale City	
	2 Dept. of Commerce; DCP	1 W. Jordan Police Dept	
	1 Tax Commission	1 Iron Co. Attorney Office	
	1 Attorney General	1 Eagle Mt. City	
	1 Lt. Gov. Office	1 Garfield School District	
	1 Board of Pardons & Parole	1 S. Jordan City Council	
	1 Dept. of Human Services; DCFS	1 Morgan Co. Sheriff's Office	
	1 Office of the UT. State Auditor		
Total	14 State Agency Hearings	7 Local Government Hearings	0

State Records Committee Appeal Requests Not Heard (60)

	State Agency	Local	Judiciary
	18 Utah Dept. of Corrections	7 University of Utah	1 3rd District Court
	3 Dept. of Human Services; DCFS	1 Santa Clara, Ivins Public Dept.	
	2 Dept. of Public Safety	1 Uintah Co.	
	2 Dept. of Health; Forensic Toxicology	1 Provo City	
	1 Career Service Review Office	1 City of Cedar Hills	
	1 Board of Pardons and Parole	1 W. Jordan Police Dept.	
	1 Dept. of Administrative Services	1 Utah Valley University	
	1 Dept. of Workforce Services	1 Iron Co. Sheriff's Office	
	1 Judicial Conduct Commission	1 Pleasant Grove Police Dept.	
	1 Utah Risk Management Mutual Association	1 SLC Police Dept.	
	1 UT. Dept. of Transportation	1 Hildale City	
	1 Division of Services for the Deaf and Hard of Hearing	1 City of W. Jordan	
	1 Utah Parks and Recreation	1 SLC Parking Enforcement	
	1 Tax Commission	1 Roosevelt Police Dept.	
	1 Dept. of Human Resource Management	1 Garfield Co. Assessor Dept.	
		1 Dammeron Valley Fire SSD	
		1 SLC Police Review Board	
Total	36 State Agency Appeals Requested	23 Local Government Appeals Requested	1 Non-Jurisdiction

Total Number of Appeal Requests Heard and Not Heard (81)

	State Agency	Local	Judiciary
	24 Utah Dept. of Corrections	7 University of Utah	1 3rd District Court
	4 Dept. of Human Services; DCFS	1 Bluffdale City	
	2 Tax Commission	1 W. Jordan Police Dept	
	2 Board of Pardons & Parole	1 Iron Co. Attorney Office	
	2 Dept. of Commerce; DCP	1 Eagle Mt. City	
	2 Dept. of Public Safety	1 Garfield School District	
	2 Dept. of Health; Forensic Toxicology	1 S. Jordan City Council	
	1 Attorney General	1 Morgan Co. Sheriff's Office	
	1 Lt. Gov. Office	1 Santa Clara, Ivins Public Dept.	
	1 Office of the UT. State Auditor	1 Uintah Co.	
	1 Career Service Review Office	1 Provo City	
	1 Dept. of Administrative Services	1 City of Cedar Hills	
	1 Dept. of Workforce Services	1 W. Jordan Police Dept.	
	1 Judicial Conduct Commission	1 Utah Valley University	
	1 Utah Risk Management Mutual Association	1 Iron Co. Sheriff's Office	
	1 UT. Dept. of Transportation	1 Pleasant Grove Police Dept.	
	1 Division of Services for the Deaf and Hard of Hearing	1 SLC Police Dept.	
	1 Utah Parks and Recreation	1 Hildale City	
	1 Dept. of Human Resource Management	1 City of W. Jordan	
		1 SLC Parking Enforcement	
		1 Roosevelt Police Dept.	
		1 Garfield Co. Assessor Dept.	
		1 Dammeron Valley Fire SSD	
		1 SLC Police Review Board	
Total	50 State Agency Totals	30 Local Government Totals	1 Non-Jurisdiction

Local Appeals Boards Hearings 2014		
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Political Subdivisions		# (est)
County (six responding)		13
Municipality (20 responding, 8 not responding)		20
Special District (none responding)		
Schools (one responding from all boards/districts)		2
Total	Political Subdivisions	35

State Government		# (est)
CAO to District Court		3

Total		38
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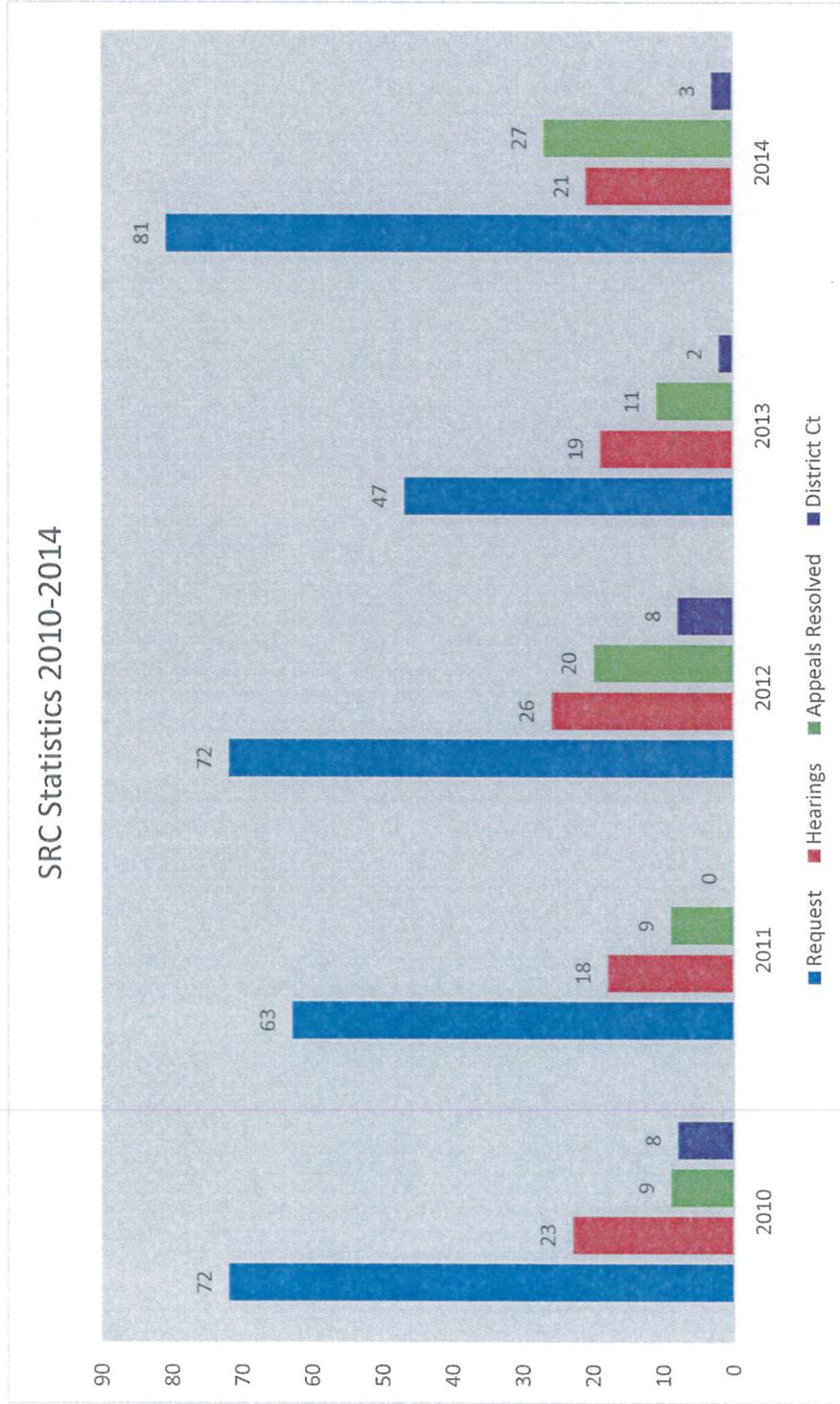
Appeal Requests Results (2010-2014)		
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	% Granted	% Denied
2010	64	36
2011	20	80
2012	54	46
2013	46	54
2014	38	62

Total Average	56%	44%
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DATA TABLE

Five-Year History of Appeals



Note. The number of requests, hearings, resolved appeals, and subsequent judicial review to the District Courts has fluctuated over the years but remained steady from 2011-2014.