

STATE RECORDS COMMITTEE

NOTICE OF PUBLIC MEETING

Thursday, May 14, 2015 at 9 a.m. to 4 p.m.

Utah State Archives Building
346 S. Rio Grande St.
Salt Lake City, UT 84101

NOTE: The Chair may recess at 12 noon and may reconvene at 12:30 p.m. for lunch when there are two or more hearings scheduled.

AGENDA

HEARINGS:

Paul Amann vs. Dept. of Human Resource Management. Mr. Amann is appealing DHRM's denial of the investigative results and report that were produced and prepared by the Attorney General's office with the assistance from DHRM. Continuance.

Richard J. Garcia vs. Utah Dept. of Corrections. Mr. Garcia is appealing the denial of transportation records from July 8, 2014, to present. Seeking records on all transportation departures and returns, dates and times, and policy regarding restraints. Telephonic.

Daniel Rivera vs. Attorney General's Office. Mr. Rivera is appealing the denial of records relating to the termination of his parental rights in Feb. 2013. Telephonic.

Swen Heimberg vs. Peace Officer Standards & Training (POST). Dyer Law Group PLLC, on behalf of Mr. Heimberg, is appealing the denial of investigative files and requesting a fee waiver.

Heather Gardner vs. Utah State Office of Education. Ms. Gardner is appealing the denial of requested emails from Utah State Office of Education employees. The CAO failed to make a determination within the time specified in Subsection Utah Code 63G-2-401(5)(a).

Nate Carlisle, *Salt Lake Tribune* vs. Attorney General's Office. Mr. Carlisle is appealing the denial of all "incoming and outgoing correspondence from 2014 or 2015 concerning Cameron Noel and records relating to Troy Rawlings and Cameron Noel. AGO denied in accordance to Subsections 63G-2-305(10)(a), (b) and (c); 63G-2-302(1)(b) and (2)(d).

CANCELED HEARINGS:

Isaac Lemus vs. Department of Human Services, DCFS. Durham Jones & Pinegar, on behalf of the Lemus Family, is appealing the partial denial of Isaac Lemus' appeal to DHS. DHS redacted requested surveillance footage that now renders the video footage unintelligible.

BUSINESS

Approval of March 19 and April 9, 2015, SRC Minutes, action item

Retention Schedules, action item

SRC appeals received

Cases in District Court

Other Business

**Next meeting scheduled for June 11, 2015 @ 9 a.m. to 4 p.m.
Administrative Rules R35, Updates**

ADA: In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify Nova Dubovik at the Utah State Archives and Records Service, 346 S. Rio Grande, Salt Lake City, Utah 84101, or call (801)531-3834, at least three days prior to the meeting.

Electronic Participation: One or more members of the State Records Committee may participate electronically or telephonically pursuant to Utah Code 52-4-207(2) and Administrative Rule 35-1-2. Please direct any questions or comments to: State Records Committee, Utah State Archives, 346 S. Rio Grande, Salt Lake City, Utah 84101 (801) 531-3834.

APPEALS TO THE STATE RECORD COMMITTEE: As of May 2015

Archives Case No.	Case Title/ Participants	Records Sought	Notes	Status
2015-15	Patrick Sullivan vs. University of Utah Medical Center (Appealed 3 April)			Pending Documentation/Other
<p>Mr. Sullivan is appealing the denial of his GRAMA request for medical records dating September 1, 2014 to present from the University of Utah, Medical Records Office. Missing governmental entity and chief administrative officer denial, and original request. Mr. Sullivan could not provide a copy of any of the requested missing documentation and requested information on how to send an appeal to the Medical Records office. Incomplete notice of appeal to SRC.</p>				
2015-25	Frances J. Naisbitt vs. Department of Public Safety (Appealed 29 April).			Other
<p>Reed Warlaumont & Stout, on behalf of Ms. Naisbitt, is appealing the Department of Public Safety's denial requesting contact information of subjects who tested on the Intoxlyzer machine prior to the failed certification. The date range is between January 29, 2015 and March 17, 2015. A Motion to Compel Disclosure was filed in the Third District Court, Case No. 151402017. This is a courtesy to the SRC in case it wants to file as an interested third party. After consulting with SRC Counsel, SRC does not intend to file as interested third party.</p>				
2015-26	Ben Winokur, <i>Passport Parking Software Developer</i> vs. Utah Tax Commission (Appealed 5 May)			Pending Documentation/Other
<p>Mr. Ben Winokur, representing attorney on behalf of Passport Parking, is appealing the Utah Tax Commission's denial to obtain motor vehicle records to provide tools that allow Utah municipalities to collect on unpaid parking citations without booting or towing residents. Missing original request, governmental entities and CAO's denial letters. Incomplete notice of appeal to SRC.</p>				
2015-27	John Rice vs. Utah Department of Corrections (UDC) (Appealed 5 May)			Pending Documentation/Other
<p>Mr. Rice is appealing Utah Department of Corrections' denial to provide access to his background investigation for a position he applied for with UDC. Missing original request, governmental entities and CAO's denial letters. Incomplete notice of appeal to SRC.</p>				
2015-30	Bodée X. Flynn vs. Department of Workforce Services (Appealed 7 May)			Pending Documentation/Other
<p>Mr. Flynn is seeking a copy of DWS-ESD Form 20M, Mental Status & Treatment/Progress Report from the Department of Workforce Services. The notice of appeal is missing original request, governmental entity and chief administrative officer's partial or whole denial of records. Incomplete notice of appeal to SRC.</p>				

2015-16	Gerardo Thomas Garza vs. Utah Department of Corrections (Appealed 9 April)		Hearing Declined.
<p>Mr. Garza is appealing the denial of his Housing Location History record from July 28, 2009 to present. The UDC records dept. denied the request and classified the record as "protected" pursuant to Subsections 63G-2-305(11) and (13). Hearing denied on April 15, 2015, by Chair and second committee member (Doug Misner) because 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. Pursuant to Utah Code 63G-2-403(4)(b)(i) and (ii)(A). <i>Jesse Frithwith vs. UDC</i>, Case No. 11-02.</p>			
2015-29	Shayne Todd vs. Utah Department of Corrections (UDC) (Appealed 7 May)		Hearing Declined.
<p>Mr. Todd is appealing the denial of Report # 265454 pertaining to letters sent to several federal buildings containing unidentifiable powder substance. UDC responded to the request on March 24, 2015, the petitioner did not file an appeal with the SRC until May 3, 2015. He has been declined a hearing due to untimeliness of filing the appeal. Committee Chair and Counsel were consulted on the matter.</p>			
2015-08a	Paul Amann vs. Dept. of Human Resource Management (Appealed 17 Feb)		Hearing Scheduled May 14, 2015
<p>Mr. Amann is appealing DHRM's denial of the investigative results and report that were produced and prepared by the Attorney General's office with the assistance from DHRM. Continuance.</p>			
2015-13	Richard J. Garcia vs. Utah Dept. of Corrections (Appealed 2 April)	Telephonic Draper	Hearing Scheduled May 14, 2015 @ 11- Noon
<p>Mr. Garcia is appealing the denial of transportation records from July 8, 2014, to present. Seeking records on all transportation departures and returns, dates and times, and policy regarding restraints. On April 15, 2015, SRC received governmental entity and chief administrative officer denials to schedule a hearing.</p>			
2015-11	Daniel Rivera vs. Attorney General's Office (Appealed 31 March)	Telephonic Gunnison	Hearing Scheduled May 14, 2015 @ Noon- 1 p.m.
<p>Mr. Rivera is appealing the denial of records relating to the termination of his parental rights in Feb. 2013. All missing governmental entities denial and original request have been submitted.</p>			
2015-12	Sven Heimberg vs. Peace Officer Standards & Training (POST) (Appealed 1 April)		Hearing Scheduled May 14, 2015
<p>Dyer Law Group PLLC, on behalf of Mr. Heimberg, is appealing the denial of investigative files and requesting a fee waiver.</p>			

2015-17	Heather Gardner vs. Utah State Office of Education (Appealed 10 April)	Hearing Scheduled May 14, 2015
Ms. Gardner is appealing the denial of requested emails from Utah State Office of Education employees. The CAO failed to make a determination within the time specified in Subsection Utah Code 63G-2-401(5)(a).		
2015-18	Nate Carlisle, Salt Lake Tribune vs. Attorney General's Office (Appealed 11 April)	Hearing Scheduled May 14, 2015
Mr. Carlisle is appealing the denial of all "incoming and outgoing correspondence from 2014 or 2015 concerning Cameron Noel and records relating to Troy Rawlings and Cameron Noel. AGO denied in accordance to Subsections 63G-2-305(10)(a), (b) and (c); 63G-2-302(1)(b) and (2)(d).		
2015-19a 2015-20b 2015-21c 2015-22d	Patrick Sullivan vs. Utah Dept. of Corrections, Clinical Services (Appealed 20 April)	Telephonic Draper Hearing Scheduled June 11, 2015 @ 10 a.m.
Mr. Sullivan is appealing multiple denials ranging from fee waivers for medical provider charts and itemized medical bills, copies of x-rays from Sep. 19, 2014, to present, and an x-ray dated March 12, 2015, that are claimed to be maintained in the prison infirmary database system. UDC has denied the fee waivers claims the inmate is not indigent. UDC denied copies of x-rays claim it does not receive or maintain the records. Mr. Sullivan requested a subpoena for the x-ray technician's testimony. The Chair denied the request because the Committee has a written statement regarding the records availability in the database system. 15-19a UDC does not receive or maintain x-ray copies. Scheduled hearing for June. 15-20b is requesting a fee waiver for copies of the University Medical Center medical bills from Sep. 1, 2014 and present. Scheduled hearing for June. 15-21c Appealing UDC response it does not have March 12, 2015, x-ray, the March 12, 2015, date on the x-ray report is a typo. Scheduled hearing for June. 15-22d requesting fee waiver for Provider Chart. Scheduled hearing for June.		
2015-28	Patrick Sullivan vs. Utah Dept. of Corrections, Clinical Services (Appealed 5 May)	Telephonic Draper Hearing Scheduled June 11, 2015 @ 10 a.m.
Mr. Sullivan is appealing a fee waiver denial for five various types of medical records and five various types of Adult Probation and Parole (AP&P) records. The ten records requests were denied because Mr. Sullivan does not meet the indigent status criteria for a fee waiver. In addition he requested an expedited hearing. The State Records Committee Chair did not grant an expedited hearing because the petitioner did not prove "good cause shown." Pursuant UC 63-2-204(3)(a), 63G-2-403(4)(a)(i), and R35-6-2(4).		

2014-63	P. Robert Augason vs. University of Utah (Appealed 21 Oct)	Telephonic	Hearing Scheduled June 11, 2015
Mr. Augason is appealing the denial of records relating to the property, income, and trademark rights associated with various block "U" trademarks. Mr. Augason stated the respondent has not provided the requested records as promised. SRC granted Mr. Augason a new hearing date.			
2015-23	Karl Losee vs. Utah Department of Corrections (Appealed 23 April)	Telephonic Draper	Hearing Scheduled June 11, 2015 @ 9-10 a.m.
Mr. Losee is appealing the partial denial of email correspondences classified "private" in relation to a March 6, 2014, attack that left him blind. He requested emails from 18 UDC staff members during the time frame March 6, 2014, to January 9, 2015. 15-23 and 15-14 have been combined because it is the same governmental entity.			
2015-14	Karl Losee vs. Utah Department of Corrections (Appealed 2 April)	Telephonic Draper	Hearing Scheduled June 11, 2015 @ 9-10 a.m.
Mr. Losee is appealing the redaction and denial of emails from December 2009 to March 31, 2010, involving him and 6 UDC staff members listed on the GRAMA request. On April 29, 2015, SRC received governmental entity and original request to schedule a hearing.			
2015-24	Kevin Opsahl, <i>The Herald Journal</i> vs. Utah State University (Appealed 29 April)		Hearing Scheduled June 11, 2015
Mr. Opsahl is appealing the university's decision not to release all contracts between Maverick and Utah State University related to the corporate sponsorship and renaming of Romney Stadium. The university has cited the records qualify as private records based on Maverick's claim of business confidentiality. Pursuant to Utah Code 63G-2-305, -309, and 53B-16-304.			
2014-73	Isaac Lemus vs. Department of Human Services, DCFS (Appealed 26 Nov)		Hearing Rescheduled July 9, 2015
Durham Jones & Pinegar, on behalf of the Lemus Family, is appealing the partial denial of Isaac Lemus' appeal to DHS. DHS redacted requested surveillance footage that now renders the video footage unintelligible. Hearing postponed for May 14, 2015, and rescheduled on July 9, 2015.			

Herzburg handout

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**UTAH
ADMINISTRATIVE
CODE
ANNOTATED**

***The Complete Administrative
Rules of the State of Utah***

2014 Edition

Compiled by

**The Utah Division of Administrative Rules
Department of Administrative Services**

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Annotated by the Editorial Staff of the Publisher



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officer in its investigation and may use any adjudicative findings to help determine what course of action to take. This will not preclude the division from conducting an independent investigation if the division finds it is necessary.

J. The division will take action based on the actual conduct of the peace officer as determined by an investigative process, not necessarily on the punishment instituted by the law enforcement agency which employs the peace officer or any court findings.

K. Witnesses and other evidence may be subpoenaed for the investigation pursuant to Section 53-6-210.

L. If ordinary investigative procedures cannot resolve the facts at issue, a peace officer may be requested to submit to a polygraph examination.

M. The director may immediately suspend a peace officer's certification as provided in Section 63G-4-502 if the director believes it is necessary to ensure the safety and welfare of the public, the continued public trust or professionalism of law enforcement.

N. Once the investigation is concluded, the division shall determine whether there is sufficient evidence to proceed with an adjudicative proceeding.

O. If the division determines that there is insufficient evidence to find that a peace officer engaged in conduct in violation of Subsection 53-6-211(1), the director shall issue a letter to the peace officer indicating that the investigation has been concluded and that the division shall take no action.

R728-409-7. Purpose of Adjudicative Proceedings.

A. The purpose of an adjudicative proceeding will be to determine whether there is sufficient evidence to find that the respondent committed the alleged conduct by clear and convincing evidence and whether such conduct falls within the grounds for administrative action enumerated in Subsection 53-6-211(1).

B. All adjudicative proceedings initiated by the division for the purpose of suspending or revoking a peace officer's certification shall be formal proceedings as provided by Section 63G-4-202.

R728-409-8. Commencement of Adjudicative Proceedings - Filing of the Notice of Agency Action.

A. Except as provided by 63G-4-502 all adjudicative proceedings initiated by the division for the purpose of suspending or revoking a peace officer's certification shall be commenced by the filing of a Notice of Agency Action.

B. The Notice of Agency Action shall be signed by the director and shall comply with the requirements of Section 63G-4-201.

C. The Notice of Agency Action shall be filed with the division and a copy shall be sent to the respondent by certified mail.

R728-409-9. Responsive Pleadings.

A. The respondent must file with the division a written response, signed by the respondent or his attorney, within 30 days of the mailing date of the Notice of Agency Action.

B. The written response must comply with the requirements in Section 63G-4-204.

R728-409-10. Consent Agreements.

A. Once a Notice of Agency Action has been issued, the division may seek a consent agreement with the respondent.

B. The respondent will have 20 days from the date that the consent agreement is signed by the director to respond to the division regarding the consent agreement.

C. If a consent agreement is not sought or is not reached, the adjudicative proceeding will continue. The period of time in which the respondent must file a responsive pleading to the Notice of Agency Action is not extended if the parties are unable to reach a consent agreement.

D. If a consent agreement is reached, it shall be signed by the respondent and the director and be filed with the division. The consent agreement shall indicate that the matter shall be heard at the next regularly scheduled council meeting.

R728-409-11. Default.

A. The ALJ may enter an order of default against a party if:

1. the respondent fails to file the response required by rule R728-409-9; or
2. the respondent fails to attend or participate in the hearing.

B. The order of default shall include a statement of the grounds for default and shall indicate that the matter will be heard at the next regularly scheduled council meeting.

C. The ALJ shall issue the order of default. The order of default shall be filed with the division and a copy shall be sent to the respondent by certified mail.

D. The respondent may seek to set aside the default order by filing a motion within 3 months of the date of the order of default. The ALJ may set aside the order of default for good cause shown.

R728-409-12. Scheduling a Hearing before the ALJ.

A. After the division receives the responsive pleading from the respondent, notice of the location, date and time for the hearing will be issued by the division. The notice of hearing shall be filed with the division and a copy shall be sent to the respondent by certified mail.

B. The hearing will be held within a reasonable time after service of the responsive pleading unless a later scheduling is ordered by the ALJ, or mutually agreed upon by the respondent and the division.

R728-409-13. Discovery and Subpoenas.

A. In formal adjudicative proceedings parties may conduct only limited discovery. A respondent's right to discovery does not extend to interrogatories, requests for admissions, request for the production of documents, request for the inspection of items, or depositions.

B. Upon request, the respondent is entitled to a copy of the materials contained in the division's investigative file that the division intends to use in the adjudicative proceeding.

C. The disclosure of all discovery materials is subject to the provisions in the Government Records Access and Management Act, Section 63G-2-101 et seq. The division may charge a fee for discovery in accordance with Section 63G-2-203.

D. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence for adjudicative proceedings shall be issued by the division pursuant to Section 53-6-210, by the ALJ when requested by any party, or by the ALJ on his own motion pursuant to Section 63G-4-205.

§ 63G-2-403. Appeals to the records committee, UT ST § 63G-2-403

West's Utah Code Annotated
Title 63g. General Government
Chapter 2. Government Records Access and Management Act (Refs & Annos)
Part 4. Appeals

U.C.A. 1953 § 63G-2-403
Formerly cited as UT ST § 63-2-403

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

Currentness

(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 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 days after the date the notice of appeal is filed but no longer than 52 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 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.

Credits

Laws 2008, c. 382, § 1339, eff. May 5, 2008; Laws 2012, c. 377, § 13, eff. May 8, 2012; Laws 2013, c. 445, § 18, eff. May 1, 2013.

Notes of Decisions (1)

U.C.A. 1953 § 63G-2-403, UT ST § 63G-2-403

Current through 2014 General Session.

End of Document

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(3) If a statute or the agency's rules require review of an order by the agency or a superior agency, the agency or superior agency shall review the order within a reasonable time or within the time required by statute or the agency's rules.

(4) To assist in review, the agency or superior agency may by order or rule permit the parties to file briefs or other documents, or to conduct oral argument.

(5) Notice of hearings on review shall be mailed to all parties.

(6)(a) Within a reasonable time after the filing of any response, other filings, or oral argument, or within the time required by statute or applicable rules, the agency or superior agency shall issue a written order on review.

(b) The order on review shall be signed by the agency head or by a person designated by the agency for that purpose and shall be mailed to each party.

(c) The order on review shall contain:

- (i) a designation of the statute or rule permitting or requiring review;
- (ii) a statement of the issues reviewed;
- (iii) findings of fact as to each of the issues reviewed;
- (iv) conclusions of law as to each of the issues reviewed;
- (v) the reasons for the disposition;
- (vi) whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded;
- (vii) a notice of any right of further administrative reconsideration or judicial review available to aggrieved parties; and
- (viii) the time limits applicable to any appeal or review.

63G-4-302. Agency review — Reconsideration.

(1)(a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63G-4-301 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be mailed to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

PART 4

JUDICIAL REVIEW

63G-4-401. Judicial review — Exhaustion of administrative remedies.

(1) A party aggrieved may obtain judicial review of final agency action, except in actions where judicial review is expressly prohibited by statute.

(2) A party may seek judicial review only after exhausting all administrative remedies available, except that:

(a) a party seeking judicial review need not exhaust administrative remedies if this chapter or any other statute states that exhaustion is not required;

(b) the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:

- (i) the administrative remedies are inadequate; or
- (ii) exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

(3)(a) A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued or is considered to have been issued under Subsection 63G-4-302(3)(b).

(b) The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in this chapter.

63G-4-402. Judicial review — Informal adjudicative proceedings.

(1)(a) The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile courts have jurisdiction over all state agency actions relating to:

- (i) the removal or placement of children in state custody;
- (ii) the support of children under Subsection (1)(a)(i) as determined administratively under Section 78A-6-1106; and
- (iii) substantiated findings of abuse or neglect made by the Division of Child and Family Services, after an evidentiary hearing.

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains the petitioner's principal place of business.

(2)(a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:

- (i) the name and mailing address of the party seeking judicial review;
- (ii) the name and mailing address of the respondent agency;
- (iii) the title and date of the final agency action to be reviewed, together with a copy, summary, or brief description of the agency action;
- (iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;
- (v) a copy of the written agency order from the informal proceeding;
- (vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;
- (vii) a request for relief, specifying the type and extent of relief requested; and
- (viii) a statement of the reasons why the petitioner is entitled to relief.

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

(3)(a) The court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.

(b) The Utah Rules of Evidence apply in judicial proceedings under this section.

63G-4-403. Judicial review — Formal adjudicative proceedings.

(1) As provided by statute, the Supreme Court or the Court

of Appeals has jurisdiction resulting from formal

(2)(a) To seek judicial review from formal adjudicative proceedings, a party shall file a petition for review with the appellate court.

(b) The appellate court shall govern all appeals from the appellate court.

(3) The content of the record for judicial review shall be governed by the following:

- (a) all parties shall file a summary of the proceedings;
- (b) the appellate court shall prepare a transcript of the proceedings;
- (c) the transcript shall be filed with the appellate court;
- (d) the transcript shall be made available to the parties;
- (e) the transcript shall be made available to the public;
- (f) the transcript shall be made available to the public;
- (g) the transcript shall be made available to the public;
- (h) the transcript shall be made available to the public;
- (i) the transcript shall be made available to the public;
- (j) the transcript shall be made available to the public;
- (k) the transcript shall be made available to the public;
- (l) the transcript shall be made available to the public;
- (m) the transcript shall be made available to the public;
- (n) the transcript shall be made available to the public;
- (o) the transcript shall be made available to the public;
- (p) the transcript shall be made available to the public;
- (q) the transcript shall be made available to the public;
- (r) the transcript shall be made available to the public;
- (s) the transcript shall be made available to the public;
- (t) the transcript shall be made available to the public;
- (u) the transcript shall be made available to the public;
- (v) the transcript shall be made available to the public;
- (w) the transcript shall be made available to the public;
- (x) the transcript shall be made available to the public;
- (y) the transcript shall be made available to the public;
- (z) the transcript shall be made available to the public;

(4) The appellate court shall have jurisdiction to review the agency's decision on judicial review has the following:

- (a) the agency action is not final;
- (b) the agency action is not final;
- (c) the agency action is not final;
- (d) the agency action is not final;
- (e) the agency action is not final;
- (f) the persons who were parties in the informal adjudicative proceedings that led to the agency action;
- (g) the agency action is not final;
- (h) the agency action is not final;
- (i) the agency action is not final;
- (j) the agency action is not final;
- (k) the agency action is not final;
- (l) the agency action is not final;
- (m) the agency action is not final;
- (n) the agency action is not final;
- (o) the agency action is not final;
- (p) the agency action is not final;
- (q) the agency action is not final;
- (r) the agency action is not final;
- (s) the agency action is not final;
- (t) the agency action is not final;
- (u) the agency action is not final;
- (v) the agency action is not final;
- (w) the agency action is not final;
- (x) the agency action is not final;
- (y) the agency action is not final;
- (z) the agency action is not final;

63G-4-404. Judicial review — Exhaustion of administrative remedies.

(1)(a) In either the district court or the appellate court, a party seeking judicial review shall file a petition for review with the appellate court.

(b) In granting review, the appellate court shall:

- (i) order agency action to be set aside or annulled;
- (ii) order the agency to take specific action;
- (iii) set aside or annul the agency action;
- (iv) enjoin or restrain the agency from taking specific action;
- (v) remand the agency action for further proceedings.

of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings.

(2)(a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.

(b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.

(3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that:

(a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

(b) the appellate court may tax the cost of preparing transcripts and copies for the record:

- (i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or
- (ii) according to any other provision of law.

(4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

(a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;

(b) the agency has acted beyond the jurisdiction conferred by any statute;

(c) the agency has not decided all of the issues requiring resolution;

(d) the agency has erroneously interpreted or applied the law;

(e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;

(f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;

(g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;

(h) the agency action is:

- (i) an abuse of the discretion delegated to the agency by statute;
- (ii) contrary to a rule of the agency;
- (iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or
- (iv) otherwise arbitrary or capricious. 2008

63G-4-404. Judicial review — Type of relief.

(1)(a) In either the review of informal adjudicative proceedings by the district court or the review of formal adjudicative proceedings by an appellate court, the court may award damages or compensation only to the extent expressly authorized by statute.

(b) In granting relief, the court may:

- (i) order agency action required by law;
- (ii) order the agency to exercise its discretion as required by law;
- (iii) set aside or modify agency action;
- (iv) enjoin or stay the effective date of agency action;

or
(v) remand the matter to the agency for further proceedings.

(2) Decisions on petitions for judicial review of final agency action are reviewable by a higher court, if authorized by statute. 2008

63G-4-405. Judicial review — Stay and other temporary remedies pending final disposition.

(1) Unless precluded by another statute, the agency may grant a stay of its order or other temporary remedy during the pendency of judicial review, according to the agency's rules.

(2) Parties shall petition the agency for a stay or other temporary remedies unless extraordinary circumstances require immediate judicial intervention.

(3) If the agency denies a stay or denies other temporary remedies requested by a party, the agency's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

(4) If the agency has denied a stay or other temporary remedy to protect the public health, safety, or welfare against a substantial threat, the court may not grant a stay or other temporary remedy unless it finds that:

(a) the agency violated its own rules in denying the stay; or

(b) (i) the party seeking judicial review is likely to prevail on the merits when the court finally disposes of the matter;

(ii) the party seeking judicial review will suffer irreparable injury without immediate relief;

(iii) granting relief to the party seeking review will not substantially harm other parties to the proceedings; and

(iv) the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the agency's action under the circumstances. 2008

PART 5

ORDERS AND ENFORCEMENT

63G-4-501. Civil enforcement.

(1)(a) In addition to other remedies provided by law, an agency may seek enforcement of an order by seeking civil enforcement in the district courts.

(b) The action seeking civil enforcement of an agency's order must name, as defendants, each alleged violator against whom the agency seeks to obtain civil enforcement.

(c) Venue for an action seeking civil enforcement of an agency's order shall be determined by the requirements of the Utah Rules of Civil Procedure.

(d) The action may request, and the court may grant, any of the following:

- (i) declaratory relief;
- (ii) temporary or permanent injunctive relief;
- (iii) any other civil remedy provided by law; or
- (iv) any combination of the foregoing.

(2)(a) Any person whose interests are directly impaired or threatened by the failure of an agency to enforce an agency's order may timely file a complaint seeking civil enforcement of that order, but the action may not be commenced:

(i) until at least 30 days after the plaintiff has given notice of the plaintiff's intent to seek civil enforcement of the alleged violation to the agency head, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

(ii) if the agency has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or a similarly situated defendant; or

(iii) if a petition for judicial review of the same order has been filed and is pending in court.

(b) The complaint seeking civil enforcement of an agency's order must name, as defendants, the agency whose

List of Investigative Files at Issue in Swen Heimberg Appeal of the
Department of Public Safety's Denial of Mr. Heimberg's GRAMA Request

1. Blake A. Day
2. Larry E. Carver
3. Anita Bench
4. Eric R. Jensen
5. Jacob R. Boehme
6. Nicholas A. Riggs
7. Brent V. Barnes
8. Jeffrey R. Bigler
9. Ron L. Lance

R35. Administrative Services, Records Committee.

R35-1. State Records Committee Appeal Hearing Procedures.

R35-1-1. Scheduling Committee Meetings.

(1) The Executive Secretary shall respond in writing to the notice of appeal within ~~five~~seven business days.

(2) Two weeks prior to the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting on the Utah Public Notice Website.

(3) One week prior to the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting, indicating the agenda, date, time, and place of the meeting at the building where the meeting is to be held and at the Utah State Archives.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Opening statements shall be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present their opening statements before the Committee.

(3) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed twenty minutes to present testimony and evidence, to call witnesses, and to respond to questions from Committee members.

(4) Witnesses providing testimony shall be sworn in by the Committee Chair.

(5) Questioning of the witnesses and parties by Committee members is permitted.

(6) The governmental entity must bring the disputed records to the hearing to allow the Committee to view records in camera if it deems an in camera inspection necessary. If the records withheld are voluminous or the governmental entity contends they have not been identified with reasonable specificity, the governmental entity shall notify the Committee and the adverse party at least two days before the hearing and obtain approval from the Committee Chair to bring a representative sample of the potentially responsive records to the hearing, if it is possible to do so.

(7) Third party presentations may be permitted. Prior to the hearing, the third party shall notify the Executive Secretary of intent to present. Third party presentations shall be limited to five minutes.

(8) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(9) After presentation of the evidence, the Committee shall commence deliberations. A Committee Member shall make a motion to grant or to deny the petitioner's request in whole or in part. Following discussion of the motion, the Committee Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(10) The Committee may adjourn, reschedule, continue, or reopen a hearing on the motion of a member.

(11) Except as expressly authorized by law, there shall be no communication between the parties and the members of

R35-1-4. Committee Minutes.

(1) Purpose. Utah Code Section 52-4-203 requires any public body to establish and implement procedures for the public body's approval of the written minutes of each meeting. This rule establishes procedures for the State Records Committee to approve the written minutes of each meeting.

(2) Authority. This rule is enacted under the authority of Utah Code Sections 52-4-203, 63G-3-201, and 63A-12-101 et seq.

(3) All meetings of the Committee shall be recorded. The recording of the open meeting shall be made available to the public within three business days. Access to the audio recordings shall be provided by the Executive Secretary on the Utah Public Notice Website.

(4) Approved written minutes shall be the official record of the meetings and appeal hearings and shall be maintained by the Executive Secretary.

(a) Written minutes shall be read by members prior to the next scheduled meeting, including electronic meetings.

(b) Written minutes from meetings shall be made available no later than one week prior to the date of the next regularly scheduled Committee meeting.

(c) When minutes are complete but awaiting official approval, they are a public record and must be marked as "Draft."

(d) At the next meeting, at the direction of the Committee Chair, minutes shall be amended and/or approved with individual votes recorded in the minutes. The minutes shall be then marked as "Approved."

(e) When the minutes are "Approved" they will be so noted in the printed and online versions. A copy of the approved minutes shall be made available for public access on the Utah Public Notice Website.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: September 9, 2014

Notice of Continuation: June 3, 2014

Authorizing, and Implemented or Interpreted Law: 63G-2-502(2)(a)

R35. Administrative Services, Records Committee.

R35-1a. State Records Committee Definitions.

R35-1a-1. Definitions.

In addition to terms defined in Section 63G-2-103, Utah Code, the following terms apply to this rule:

(a) "Committee" means the State Records Committee in accordance with Section 63G-2-501, Utah Code.

(b) "Denial" means an act taken to restrict access to a government record in accordance with Section 63G-2-205 and Subsection 63G-2-403(4), Utah Code.

(c) "Executive Secretary" means the individual appointed annually as required in Subsection 63G-2-502(3), Utah Code.

(d) "Expedited Hearing" means a meeting by the Committee to review a designation of records by a government entity in a shorter time period than in accordance with Subsection 63G-2-403(4)(a).

(e) "Hearing" means a meeting by the Committee to hear an appeal of a records decision by a government entity in accordance with Section 63G-2-403, Utah Code.

(f) "Order" means the Decision and Order issued by the State Records Committee as provided by Subsection 63G-2-403(11), Utah Code.

(g) "Subpoena" means a written order requiring appearance before the State Records Committee to give testimony in accordance with Section 63G-2-403, Utah Code.

KEY: state records committee, records appeal hearings, government documents

Date of Enactment or Last Substantive Amendment: September 9, 2014

Notice of Continuation: June 3, 2014

Authorizing, and Implemented or Interpreted Law: 63G-2-502(2)(a)

R35. Administrative Services, Records Committee.

R35-2. Declining Appeal Hearings.

R35-2-1. Authority and Purpose.

In accordance with Section 63G-2-502 and Subsection 63G-2-403(4), Utah Code, this rule establishes the procedure declining to schedule hearings by the Executive Secretary of the State Records Committee.

R35-2-2. Declining Requests for Hearings.

(1) In order to decline a request for a hearing under Subsection 63G-2-403(4), the Executive Secretary shall consult with the Committee Chair and at least one other member of the Committee as selected by the Chair.

(2) In any appeal to the Committee of a governmental entity's denial of access to records for the reason that the record is not maintained by the governmental entity, the petitioner shall provide sufficient evidence in the petitioner's statement of facts, reasons, and legal authority in support of the appeal, that the record was maintained by the governmental entity at one time, or that the governmental entity has concealed, or not sufficiently or improperly searched for the record. The Committee Chair shall determine whether or not the petitioner has provided sufficient evidence. If the Committee Chair determines that sufficient evidence has been provided, the Chair shall direct the Executive Secretary to schedule a hearing as otherwise provided in these rules. If the Committee Chair determines that sufficient evidence has not been provided, the Chair shall direct the Executive Secretary to not schedule a hearing and to inform the petitioner of the determination. Evidence that a governmental entity has disposed of the record according to retention schedules is sufficient basis for the Chair to direct the Executive Secretary to not schedule a hearing.

(3) In order to file an appeal, the petitioner must submit a copy of his or her initial records requests or a statement of the specific records requested if a copy is unavailable to the petitioner, as well as any denial of the records request. The Executive Secretary shall notify the petitioner that a hearing cannot be scheduled until the proper information is submitted.

(4) The Committee Chair and one other member of the Committee must both agree with the Executive Secretary's recommendation to decline to schedule a hearing. Such a decision shall consider the potential for a public interest claim as may be put forward by the petitioner under the provisions of Subsection 63G-2-403(11)(b), Utah Code. A copy of each decision to deny a hearing shall be retained in the file.

(5) The Executive Secretary's notice to the petitioner indicating that the request for a hearing has been denied, as provided for in Subsection 63G-2-403(4)(b)(ii)(A), Utah Code, shall include a copy of the previous order of the Committee holding that the records at issue are appropriately classified.

(6) The Executive Secretary shall report on each of the hearings declined at each regularly scheduled meeting of the Committee in order to provide a public record of the actions taken.

(7) If a Committee member has requested a discussion to reconsider the decision to decline a hearing, the Committee may, after discussion and by a majority vote, choose to reverse the decision and hold a hearing. Any discussion of

R35. Administrative Services, Records Committee.

R35-4. Compliance with State Records Committee Decisions and Orders.

R35-4-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(14), Utah Code, this rule intends to establish the procedure for complying with an order of the State Records Committee.

R35-4-2. Notices of Compliance.

(1) The Executive Secretary of the Committee shall send an order of the Committee by certified mail to the petitioner and to the governmental entity ordered to produce records.

(2) Pursuant to Subsection 63G-2-403~~(14)~~ (15)(a), Utah Code, each governmental entity ordered by the Committee to produce records, shall file with the Executive Secretary either a notice of compliance, or a copy of the appellant's notice of intent to appeal the Committee order, no later than the thirtieth day following the date of the Committee order.

(3) The notice of compliance shall contain a statement, signed by the head of the governmental entity, that the records ordered to be produced have been delivered to the petitioner, and shall state the method and date of delivery.

(4) In the event a governmental entity fails to file a notice of compliance or a copy of the appellant's notice of intent to appeal the Committee order within the time frame specified, the Committee shall send written notice of the entity's noncompliance to the governor for executive branch agencies, to the Legislative Management Committee for legislative branch entities, to the Judicial Council for judicial branch entities, and to the mayor or chief executive officer of a local government for local or regional governmental entities.

(5) The Committee may also impose a civil penalty of up to \$500 for each day of continuing noncompliance, but only after holding a discussion of the matter at issue, and obtaining a majority vote at a regularly scheduled Committee meeting. The non-complying governmental entity shall be heard at that meeting, with discussion being limited specifically to reasons for the neglectful, willful, or intentional act. Any civil penalty imposed shall be retroactive to the first date of noncompliance.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: September 16, 2014

Notice of Continuation: June 3, 2014

Authorizing, and Implemented or Interpreted Law: 63G-2-502(2)(a)

R35. Administrative Services, Records Committee.

R35-5. Subpoenas Issued by the Records Committee.

R35-5-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(10), Utah Code, this rule intends to establish the procedures for issuing subpoenas by the State Records Committee.

R35-5-2. Subpoenas.

(1) In order to initiate a request for a subpoena, a party shall file a written request with the Committee Chair at least ~~14~~16 days prior to a hearing. The request shall describe the purpose for which the subpoena is sought, and state specifically why, given that hearsay is available before the Committee, the individual being subpoenaed must be present.

(2) The Committee Chair shall review each subpoena request and grant or deny the request within three business days, based on the following considerations:

(a) a weighing of the proposed witness' testimony as material and necessary; or

(b) a weighing of the burden to the witness against the need to have the witness present.

(3) If the Committee Chair grants the request, the requesting party may obtain a subpoena form, signed, but otherwise blank, from the Executive Secretary. The requesting party shall fill out the subpoena and have it served upon the proposed witness at least seven business days prior to a hearing.

(4) A subpoenaed witness shall be entitled to witness fees and mileage reimbursement to be paid by the requesting party. Witnesses shall receive the same witness fees and mileage reimbursement allowed by law to witnesses in a state district court.

(5) A subpoenaed witness may file a motion to quash the subpoena with the Executive Secretary at least three business days prior to the hearing at which the witness has been ordered to be present, and shall simultaneously transmit a copy of that motion to the parties. Such motion shall include the reasons for quashing the subpoena, and shall be granted or denied by the Committee Chair based on the same considerations as outlined in Subsection R35-5-2(2). As part of the motion to quash, the witness must indicate whether a hearing on the motion is requested. If a hearing is requested, it shall be granted. All parties to the appeal have a right to be present at the hearing. The hearing must occur prior to the appeal hearing, and shall be heard by the Committee Chair. The hearing may be in person or by telephone, as determined by the Committee Chair. A decision on the motion to quash shall be rendered prior to the appeal hearing.

(6) If the Committee Chair denies the request for subpoena, the denial is final and unreviewable.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: September 16, 2014

Notice of Continuation: June 3, 2014

Authorizing, and Implemented or Interpreted Law: 63G-2-502(2)(a)

R35. Administrative Services, Records Committee.

R35-6. Expedited Hearing.

R35-6-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(4)(a)(i), this rule establishes the procedure for requesting and scheduling an Expedited Hearing.

R35-6-2. Requests for an Expedited Hearing.

(1) A party appealing a records classification to the Committee may request that a hearing be scheduled to hear the appeal prior to ten business days after the date the notice of appeal is filed by making a written request to the Executive Secretary. A copy of this request shall also be mailed to the government entity.

(2) A written request shall include the reason(s) the request is being made.

(3) The Executive Secretary shall consult with the Committee Chair to decide whether an Expedited Hearing is warranted.

(4) The standard for granting an Expedited Hearing is "good cause shown." The Committee Chair shall take into account the reason for the request, and balance that against the burden to the Committee and the governmental entity.

R35-6-3. Scheduling the Expedited Hearing.

(1) In the event that an Expedited Hearing is granted, the Executive Secretary shall poll the Committee to determine a date upon which a quorum can be obtained.

(2) After settling on a date no sooner than five seven days nor later than 14-16 days after the notice of appeal has been filed, the Executive Secretary shall contact the petitioner and governmental entity and schedule the hearing.

(3) The government entity shall file its response to the appeal with the Executive Secretary, and mail a copy to the petitioner no later than three-five days prior to the scheduled hearing. The Executive Secretary shall make this response available to the Committee as soon as possible.

R35-6-4. Holding the Expedited Hearing.

With the exception of the time frame for scheduling a hearing and providing responses, all other provisions governing hearings under the Government Records Access and Management Act (GRAMA) shall apply to Expedited Hearings.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: September 16, 2014

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