

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. Scheduling and 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.~~

~~(1a or 2) 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 decline a hearing shall be retained in the file.~~

~~(1b or 3) The Executive Secretary's notice to the petitioner indicating that the request for a hearing has been declined, 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.~~

~~[Comment: The rest of these are not declining a hearing but not scheduling a hearing. We should create a new title for this Rule encapsulating both functions or create a new Rule.]~~

~~(2 or 4) 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 ~~or 5~~) In order to file an appeal, the petitioner must submit a copy of his or her initial records request or a statement of the specific records requested if a copy is unavailable to the petitioner, **any records appeal**, as well as any decision of the records request **or appeal**. The Executive Secretary shall notify the petitioner that a hearing cannot be scheduled until the proper information is submitted **within seven days of receipt of the notice appeal pursuant to Subsection 63G-2-403(2) and (4)(a)**.

~~(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/declined, 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.~~

~~[Comment: There are other times that hearings are not scheduled. Do we need to include these? At what point in any of these may the executive secretary act on her own or need committee input? They include:~~

~~(4) Appeals not timely received pursuant to Subsection 63G-2-403(1)(a) will not be scheduled.~~

~~(5) Appeals of not proper jurisdiction pertaining to the Judiciary and Legislature pursuant to Part 7 and appeals not yet of proper jurisdiction for a political subdivision that must first be appealed to a local appeals board when a local appeals board are not within the Committee's jurisdiction exists pursuant Subsection 63G-2-402(1)(b) and will not be scheduled.~~

(6) A petition from a governmental entity challenging jurisdiction based on failure of the petitioner to serve

~~notice to not schedule a hearing on jurisdictional grounds specific to the failure of a petitioner to serve notice of appeal to the governmental entity pursuant to Subsection 63G-2-403(3)(a) shall be denied. The petitioner's appeal will be accepted and a hearing scheduled before the Committee.~~

(7) The Executive Secretary shall report on ~~appeals received each of the hearings declined and not scheduled~~ at each regularly scheduled meeting of the Committee in order to provide a public record of the actions taken.

(8) If a Committee member has requested a discussion to reconsider the decision to decline ~~or not schedule~~ a hearing, the Committee may, after discussion and by a majority vote, choose to reverse the decision and hold a hearing. Any discussion of reconsideration shall be limited to those Committee members then present, and shall be based only on two questions: whether the records being requested were covered by a previous order of the Committee, and/or whether the petitioner has, or is likely to, put forth a public interest claim. Neither the petitioner nor the agency whose records are requested shall be heard at this time. If the Committee votes to hold a hearing, the Executive Secretary shall schedule it on the agenda of the next regularly scheduled Committee meeting.

(9) The Executive Secretary shall compile and include in an annual report to the Committee a complete documented list of all hearings held, withdrawn, and declined.

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

Date of Enactment or Last Substantive Amendment: June 22, 2017

Notice of Continuation: June 3, 2014

Authorizing, and Implemented or Interpreted Law: 63G-2-403(4)