

# Records Access Essentials

Utah State Archives

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a division of the Department of Administrative Services

# Records ombudsman

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

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

(b) The government records ombudsman may not be a member of the records committee.

(2) The government records ombudsman shall:

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

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



# Section one

# General provisions

## **63G-2-102. Legislative intent.**

(1) In enacting this act, the Legislature recognizes two constitutional rights:

(a) the public's right of access to information concerning the conduct of the public's business; and

(b) the right of privacy in relation to personal data gathered by governmental entities.

(2) The Legislature also recognizes a public policy interest in allowing a government to restrict access to certain records, as specified in this chapter, for the public good.

# General provisions

## 63G-2-103. Definitions.

(22) (a) "**Record**" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:

(i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and

(ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

# General provisions

## 63G-2-103. Definitions.

(22) (b) "**Record**" does not mean:

(i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity:

(A) in a capacity other than the employee's or officer's governmental capacity; or

(B) that is unrelated to the conduct of the public's business;

(ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;

(iii) material that is legally owned by an individual in the individual's private capacity;...

(ix) a daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working;

# General provisions

## 63G-2-103. Definitions.

(19) "**Private record**" means a record containing data on individuals that is private as provided by Section [63G-2-302](#).

(6) "**Controlled record**" means a record containing data on individuals that is controlled as provided by Section [63G-2-304](#).

(20) "**Protected record**" means a record that is classified protected as provided by Section [63G-2-305](#).

# General provisions

## 63G-2-103. Definitions.

(21) "**Public record**" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

# General provisions

## 63G-2-103. Definitions.

(23) "**Record series**" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

# General provisions

## 63G-2-103. Definitions.

(3) "**Classification**," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Subsection [63G-2-201](#)(3)(b).

# General provisions

## 63G-2-103. Definitions.

(7) "**Designation**," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.

# General provisions

## 63G-2-103. Definitions.

(25) "**Records officer**" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

# General provisions

## 63G-2-103. Definitions.

(11) "(a) **Governmental entity**" means:

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, the State Board of Education, the State Board of Regents, and the State Archives;

(ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iv) any state-funded institution of higher education or public education; or

v) any political subdivision of the state...

(b) "Governmental entity" also means every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business.

# General provisions

## 63G-2-103. Definitions.

(17) "**Person**" means:

- (a) an individual;
- (b) a nonprofit or profit corporation;
- (c) a partnership;
- (d) a sole proprietorship;
- (e) other type of business organization; or
- (f) any combination acting in concert with one another."

# General provisions

## 63G-2-103. Definitions.

(2) "**Chronological logs**" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show:

- (a) the time and general nature of police, fire, and paramedic calls made to the agency; and
- (b) any arrests or jail bookings made by the agency.

# General provisions

## 63G-2-103. Definitions.

(14) (a) "**Initial contact report**" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:

(i) the date, time, location, and nature of the complaint, the incident, or offense;

(ii) names of victims;

(iii) the nature or general scope of the agency's initial actions taken in response to the incident;

(iv) the general nature of any injuries or estimate of damages sustained in the incident;

(v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or

(vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.

(b) Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (14)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under

Subsection [63G-2-201](#)(3)(b).

# General provisions

## 63G-2-106. Records of security measures.

The records of a governmental entity or political subdivision regarding **security measures** designed for the protection of persons or property, public or private, are not subject to this chapter. These records include:

- (1) security plans;
- (2) security codes and combinations, and passwords;
- (3) passes and keys;
- (4) security procedures; and
- (5) building and public works designs, to the extent that the records or information relate to the ongoing security measures of a public entity.

# General provisions

## **63G-2-108. Certification of records officer.**

Each records officer of a governmental entity or political subdivision shall, on an annual basis, successfully complete online training and obtain certification from state archives in accordance with Section [63A-12-110](#).

## [Certification information](#)

# Section two

# Access to records

## 63G-2-204. Requests – Time limit for response and extraordinary circumstances.

(1) A person making a request for a record shall furnish the governmental entity with a written request containing:

- (a) the person's **name**, mailing **address**, and daytime **telephone number**, if available; and
- (b) a **description** of the record requested that identifies the record with reasonable specificity.

# Access to records

## **63G-2-204. Requests – Time limit for response and extraordinary circumstances.**

(2) (a) Subject to Subsection (2)(b), a person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record.

# Access to records

## 63G-2-204. Requests – Time limit for response and extraordinary circumstances.

(3) After receiving a request for a record, a governmental entity shall: ...

(b) (i) **approve** the request and provide a copy of the record;

(ii) **deny** the request in accordance with the procedures and requirements of Section [63G-2-205](#);

(iii) **notify** the requester that it does not maintain the record requested and provide, if known, the name and address of the governmental entity that does maintain the record; or

(iv) **notify** the requester that because of one of the extraordinary circumstances listed in Subsection (5), it cannot immediately approve or deny the request, and include with the notice:

Another governmental entity is using the record	The governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work	<a href="#">63G-2-204(5)(a)</a> <a href="#">63G-2-204(6)(a)</a>
Another governmental entity is using the record as part of an audit and returning the record would impair the audit	The originating governmental entity shall notify the requester when the record is available for inspection and copying	<a href="#">63G-2-204(5)(b)</a> <a href="#">63G-2-204(6)(b)</a>
The request is for a voluminous quantity of records containing a substantial number of records or the requester seeks a substantial number of records in requests filed within five working days of each other	The governmental entity shall disclose the records that it has located which the requester is entitled to inspect and provide the requester with an estimate of the amount of time it will take to finish the work. It will complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible. If the person does not establish a right to an expedited response, the governmental entity may either require the person to provide for copying of the records or treat a request for multiple records as separate record requests, and respond sequentially to each request	<a href="#">63G-2-204(5)(c)</a> <a href="#">63G-2-204(6)(c)</a>
The governmental entity is currently processing a large number of records requests		<a href="#">63G-2-204(5)(d)</a> <a href="#">63G-2-204(6)(c)</a>
The request requires the governmental entity to review a large number of records to locate the records requested		<a href="#">63G-2-204(5)(e)</a> <a href="#">63G-2-204(6)(c)</a>
The decision to release a record involves legal issues that require the governmental entity to seek legal counsel	The governmental entity shall approve or deny the request within five business days after the response time specified for the original request has expired [5 day extension]	<a href="#">63G-2-204(5)(f)</a> <a href="#">63G-2-204(5)(d)</a>
Segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing	The governmental entity shall fulfill the request within 15 business days from the date of the original request	<a href="#">63G-2-204(5)(g)</a> <a href="#">63G-2-204(6)(e)</a>
Segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming	The governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible	<a href="#">63G-2-204(5)(h)</a> <a href="#">63G-2-204(6)(f)</a>

# Access to records

## **63G-2-204. Requests – Time limit for response and extraordinary circumstances.**

(8) If the governmental entity fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the record.

# Public right to inspect records

## **63G-2-201. Right to inspect records and receive copies of records.**

(1) Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections [63G-2-203](#) and [63G-2-204](#).

(2) A record is public unless otherwise expressly provided by statute.

# Public right to inspect records

## 63G-2-201. Right to inspect records and receive copies of records.

(3) The following records are not public:

(a) a record that is private, controlled, or protected under Sections [63G-2-302](#), [63G-2-303](#), [63G-2-304](#), and [63G-2-305](#); and

(b) a record to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

(4) Only a record specified in Section [63G-2-302](#), [63G-2-303](#), [63G-2-304](#), or [63G-2-305](#) may be classified private, controlled, or protected.

# Public right to inspect records

## **63G-2-201. Right to inspect records and receive copies of records.**

(6) (a) The disclosure of a record to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including a record for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.

# Public right to inspect records

## **63G-2-201. Right to inspect records and receive copies of records.**

(8) (a) In response to a request, a governmental entity is not required to:

(i) create a record; (ii) compile, format, manipulate, package, summarize, or tailor information; (iii) provide a record in a particular format, medium, or program not currently maintained by the governmental entity; (iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or (v) fill a person's records request if:

(A) the record requested is accessible in the identical physical form and content in a public publication or product produced by the governmental entity receiving the request;

(B) the governmental entity provides the person requesting the record with the public publication or product; and

(C) the governmental entity specifies where the record can be found in the public publication or product.

(b) Upon request, a governmental entity may provide a record in a particular form under Subsection (8)(a)(ii) or (iii) if:

(i) the governmental entity determines it is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and

(ii) the requester agrees to pay the governmental entity for providing the record in the requested form in accordance with Section [63G-2-203](#).

# Public right to inspect records

## **63G-2-201. Right to inspect records and receive copies of records.**

(11)A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this chapter.

# Public right to inspect records

## **63G-2-201. Right to inspect records and receive copies of records.**

(12) Subject to the requirements of Subsection (8), a governmental entity shall provide access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

- (a) the person making the request requests or states a preference for an electronic copy;
- (b) the governmental entity currently maintains the record in an electronic format that is reproducible and may be provided without reformatting or conversion; and
- (c) the electronic copy of the record:
  - (i) does not disclose other records that are exempt from disclosure; or
  - (ii) may be segregated to protect private, protected, or controlled information from disclosure without the undue expenditure of public resources or funds.

# Access to restricted records

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

(1) Upon request.... a governmental entity shall disclose a private record to:

- (a) the subject of the record;
- (b) the parent or legal guardian of an unemancipated minor who is the subject of the record;
- (c) the legal guardian of a legally incapacitated individual who is the subject of the record;
- (d) any other individual who:
  - (i) has a power of attorney from the subject of the record;
  - (ii) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made;or.... (more)

# Access to restricted records

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

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

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

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

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

# Access to restricted records

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

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

# Access to restricted records

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

(4) Upon request ...a governmental entity shall disclose a protected record to:

(a) the person who submitted the record;

(b) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;

# Access to restricted records

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

(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

# Fees

## 63G-2-203. Fees.

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

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

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

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

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

# Fees

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

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

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

# Fees

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

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

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

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

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

# Fees

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

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

- (a) reviewing a record to determine whether it is subject to disclosure, except as permitted by Subsection (2)(a)(ii); or
- (b) inspecting a record.

# Fees

## 63G-2-203. Fees.

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

# Fees

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

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

- (i) fees are expected to exceed \$50; or
- (ii) the requester has not paid fees from previous requests.

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

# Denials

## 63G-2-205. Denials.

(1) If the governmental entity denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.

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

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

(b) **citations** to the provisions of this chapter, court rule or order, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information or information exempt from disclosure under Subsection [63G-2-201](#)(3)(b);

(c) **a statement that the requester has the right to appeal** the denial to the chief administrative officer of the governmental entity; and

(d) **the time limits** for filing an appeal, **and the name and business address of the chief administrative officer** of the governmental entity.

# Denials

## **63G-2-205. Denials.**

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

[\(forms for denial, etc.\)](#)

# Sharing records

## 63G-2-206. Sharing records.

(1) A governmental entity **may provide** a record that is private, controlled, or protected **to another governmental entity**, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity: *(conditions specified)*.

# Sharing records

## 63G-2-206. Sharing records.

- (1) ...**may provide**.... if the requesting entity:
- (a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;
  - (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;
  - (c) is authorized by state statute to conduct an audit and the record is needed for that purpose; (d) is one that collects information for presentence, probationary, or parole purposes;
  - (e) (i) is: (A) the Legislature;

# Sharing records

## 63G-2-206. Sharing records.

(2) ...**may provide**.... if the requesting entity provides written assurance that:

- (i) the record or record series is necessary to the performance of the governmental entity's duties and functions;
- (ii) the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and
- (iii) the use of the record or record series produces a public benefit that is greater than or equal to the individual privacy right that protects the record or record series.

# Sharing records

## 63G-2-206. Sharing records.

(3)(a) ... **shall provide** ...if the requesting entity:

(i) is entitled by law to inspect the record;

(ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or

(iii) *(more specific details)*

# Sharing records

## 63G-2-206. Sharing records.

(3)(b) A governmental entity **may provide** a record that is private, controlled, or protected **to a contractor or a private provider** (*conditions specified*).

# Sharing records

## 63G-2-206. Sharing records.

(3)(b) A governmental entity **may provide** a record that is private, controlled, or protected **to a contractor or a private provider** if:

(6)(b)(i) the contractor or private provider's use of the record or record series produces a public benefit that is greater than or equal to the individual privacy ...

(ii) the record or record series it requests: (A) is necessary for the performance of a contract ... (B) will only be used for the performance of the contract ... (C) will not be disclosed to any other person; and (D) will not be used for advertising or solicitation purposes; and

(iii) the contractor or private provider gives written assurance to the governmental entity ...that it will adhere to the restrictions

# Sharing records

## **63G-2-206. Sharing records.**

(4) Before disclosing a record or record series under this section ... the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement ...that it will abide by those restrictions on access...

# Subpoenas

## **63G-2-207. Subpoenas – Court ordered disclosure for discovery.**

(1) Subpoenas and other methods of discovery under the state or federal statutes or rules of civil, criminal, administrative, or legislative procedure are not written requests under Section 63G-2-204.



# Section three

# Records that must be disclosed

## 63G-2-301. Public records.

(2) **The following records are public** except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections **63G-2-201**(3)(b) and (6)(a):

(e) **information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings Act, including the records of all votes of each member of the governmental entity;**

(g) unless otherwise classified as private under Section **63G-2-303**, records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

- (i) titles or encumbrances to real property;
- (ii) restrictions on the use of real property;
- (iii) the capacity of persons to take or convey title to real property; or
- (iv) tax status for real and personal property;

(i) **data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;**

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider;

**) summary data;**

# Records that must be disclosed

## 63G-2-301. Public records.

(2) **The following records are public** except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections [63G-2-201](#)(3)(b) and (6)(a):

**(b) the name, gender, gross compensation, job title, job description, business address, business email address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of a current or former employee or officer of the governmental entity, excluding:**

**i) undercover law enforcement personnel; and**

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;

**(i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;**

k) summary data;

# Records that must be disclosed

## 63G-2-301. Public records.

(3) **The following records are normally public**, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection [63G-2-201](#)(3)(b), Section [63G-2-302](#), [63G-2-304](#), or [63G-2-305](#):

- (a) **administrative staff manuals, instructions to staff, and statements of policy;**
- (b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;
- (c) **records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;**
- (d) contracts entered into by a governmental entity;
- (e) **any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;**
- (g) chronological logs and initial contact reports;
- (j) **drafts that are circulated to anyone other than:**
  - (i) **a governmental entity;** (ii) **a political subdivision;...**
- (k) **drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;**
- (o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:
  - the disciplinary action has been completed and all time periods for administrative appeal have expired; and
  - (ii) the charges on which the disciplinary action was based were sustained;
- (p) **records maintained by the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that evidence mineral production on government lands;**
- (q) final audit reports;
- (r) **occupational and professional licenses;**

# Private records

## 63G-2-302. Private records.

### (1) **The following records are private:**

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

**(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;**

(g) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions;

# Private records

## 63G-2-302. Private records.

### (1) **The following records are private:**

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) **records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;**

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(g) **employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions;**

(k) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

# Private records

## 63G-2-302. Private records.

(2) **The following records are private if properly classified** by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection [63G-2-301](#)(2)(b) or [63G-2-301](#)(3)(o) or private under Subsection (1)(b);

**(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;**

# Private records

## 63G-2-302. Private records.

(2) **The following records are private if properly classified** by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection [63G-2-301\(2\)\(b\)](#) or [63G-2-301\(3\)\(o\)](#) or private under Subsection (1)(b);

(b) **records describing an individual's finances, except that the following are public:**

(i) records described in Subsection [63G-2-301\(2\)](#);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

# Controlled records

## 63G-2-304. Controlled records.

**A record is controlled** if:

(1) the record contains medical, psychiatric, or psychological data about an individual;

(2) the governmental entity reasonably believes that:

(a) releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual; or

(b) releasing the information would constitute a violation of normal professional practice and medical ethics; and

(3) the governmental entity has properly classified the record.

# Protected records

## 63G-2-305. Protected records.

**The following records are protected if properly classified** by a governmental entity:

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

# Protected records

## 63G-2-305. Protected records.

**The following records are protected if properly classified** by a governmental entity:

(11) records the disclosure of which would jeopardize the life or safety of an individual;

(12) **records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;**

(13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

# Protected records

## 63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(17) records that are subject to the attorney client privilege;

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

(38) accident reports, except as provided in Sections [41-6a-404](#), [41-12a-202](#), and [73-18-13](#);

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

# Protected records

## 63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(51) unless otherwise classified as public under Section [63G-2-301](#) and except as provided under Section [41-1a-116](#), an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

- (i) the nature of the law, ordinance, rule, or order; and
- (ii) the individual complying with the law, ordinance, rule, or order;

# Duty to designate and classify

## **63G-2-307. Duty to evaluate records and make designations and classifications.**

(1) A governmental entity shall:

(a) evaluate all record series that it uses or creates;

(b) designate those record series as provided by this chapter and Title 63A, Chapter 12, Part 1, Archives and Records Service; and

(c) report the designations of its record series to the state archives.

(2) A governmental entity may classify a particular record, record series, or information within a record at any time, but is not required to classify a particular record, record series, or information until access to the record is requested.

(3) A governmental entity may redesignate a record series or reclassify a record or record series, or information within a record at any time.

# Segregation of records

## **63G-2-308. Segregation of records.**

Notwithstanding any other provision in this chapter, if a governmental entity receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect under this chapter, and, if the information the requester is entitled to inspect is intelligible, the governmental entity:

- (1) shall allow access to information in the record that the requester is entitled to inspect under this chapter; and
- (2) may deny access to information in the record if the information is exempt from disclosure to the requester, issuing a notice of denial as provided in Section [63G-2-205](#).

# Confidentiality claims

## **63G-2-309. Confidentiality claims.**

(1) (a) (i) Any person who provides to a governmental entity a record that the person believes should be protected under Subsection 63G-2-305(1) or (2) or both Subsections 63G-2-305(1) and (2) shall provide with the record:

- (A) a written claim of business confidentiality; and
- (B) a concise statement of reasons supporting the claim of business confidentiality.

# Section four

A red, rectangular stamp with a distressed, ink-like texture. The word "APPEAL" is written in bold, uppercase letters, slanted slightly upwards from left to right. The stamp is positioned in the upper right quadrant of the slide.

Presentation for  
Utah League of Cities and Towns  
September 17, 2015

By Nova Dubovik  
Archivist II

State Records Committee Executive Secretary  
Open Records Portal

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801-531-3834

# Objective

- ✓ **63G-2-401** Appeal to chief administrative officer
- ✓ **63G-2-402** Appealing a decision of a chief administrative officer
- ✓ **63G-2-403** Appeals to the state records committee



**ACCESS DENIED**

Stu's Views

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Go ahead and "appeal  
to a higher authority".  
But you know Mommy rarely  
overrules me.

# Appeal to head of governmental entity

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

(a) A requester or interested party may appeal an access denial to the chief administrative officer of the governmental entity by filing a notice of appeal with the chief administrative officer within **30 days** after:

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

-the record request is considered denied under Subsection 63G-2-204(8), if that subsection applies.

# Appeal to head of governmental entity

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

(b) If a governmental entity claims [extraordinary circumstances](#) and [specifies the date](#) when the records will be available under Subsection 63G-2-204(3), and, if the requester believes the extraordinary circumstances [do not exist](#) or that the date specified [is unreasonable](#), the requester may appeal ....by filing a notice of appeal with [CAO] [within 30 days after notification...](#)

# Appeal to head of governmental entity

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

(2) The notice of appeal shall contain:

- (a) The **name, mailing address, and daytime telephone number** of the requester or interested party; and
- (b) the **relief sought**.

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

# Appeal to head of governmental entity

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

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

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

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

# Appeal to head of governmental entity

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

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

- (i) **five business days** after the chief administrative officer's receipt of the notice of appeal; or
- (ii) **12 business days** after the governmental entity sends the notice of appeal to a person who submitted a **claim of business confidentiality**.

# Appeal to head of governmental entity

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

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

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

# Appeal to head of governmental entity

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

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

-A statement requester or interested party has right to appeal the decision to:

-records committee or district court or local appeals board if the government entity has established a local appeals board

-Time Limits for filing appeal

-name and business address of:

-executive secretary of the records committee and contact information for the appeals board if one is established

# Appealing a decision of a chief administrative officer.

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

- Appeal decision to the records committee (403)
- Petition for judicial review in district court (404)
- Appeal decision to the local appeals board if decision is of a [CAO] of a governmental entity that is a political subdivision; and
- The political subdivision has established a local appeals board
- Requester does not lose or waive right to seek judicial review of the decision of the records committee or appeals board

# Appeals to the state records committee

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

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

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

(i) the circumstances described in Subsection 63G-2-401(1)(b) occur (**extraordinary circumstances**); **and**

(ii) the chief administrative officer **fails** to make a decision under Section 63G-2-401.

# Appeals to the state records committee

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

- (5) (a) **No later than five business days** before the hearing, a governmental entity shall submit to the executive secretary of the records committee a **written statement of facts, reasons, and legal authority** in support of the governmental entity's position.
- (b) The governmental entity shall **send a copy** of the **written statement** to the **petitioner by first class mail, postage prepaid**, to the requester or interested party involved in the appeal. The executive secretary shall forward a copy of the written statement to each member of the records committee.

# Appeals to the state records committee

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

(11)(a) No later than **seven business days after** the hearing, the records committee shall issue a signed order:

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

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

(15) (a) Unless a notice of intent to appeal is filed under Subsection (15)(b), each party to the proceeding shall comply with the order of the records (**no later than 30 days after decision**)

-produce the record; and

-file a notice of compliance with the records committee

# Summary of Section Four. Appeals

- ✓ **63G-2-401. Appeal to chief administrative officer: Notice of the decision of the appeal.**
  - Requester **files within 30 days after** governmental entity notification
  - five business days after** receipt shall make decision
- ✓ **63G-2-402. Appealing a decision of a chief administrative officer.**
  - state records committee, district court or appeals board if one is established by political subdivision
- ✓ **63G-2-403. Appeals to the records committee.**
  - Requester files **no later than 30 days after** notification
  - No later than **five business days before** hearing governmental entity submits statement of facts, reasons, legal authority.
  - Options: **No later than 30 days after** decision appeal records committee decision or comply and produce record and file notice of compliance with records committee

# Questions?



**Archives & Records Service**  
a division of the Department of Administrative Services



# Section 7

By Rosemary Cundiff  
Government records ombudsman

# Political subdivisions

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

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

(5) (a) A political subdivision shall establish an appeals process for persons aggrieved by classification, designation, or access decisions.

(c)(i) A political subdivision may establish an appeals board to decide an appeal of a decision of the chief administrative officer affirming an access denial.

# Political subdivisions

(5)(c) (ii) An appeals board established by a political subdivision shall be composed of three members:

(A) one of whom shall be an employee of the political subdivision; **and**

(B) two of whom shall be members of the public, at least one of whom shall have professional experience with requesting or managing records.

(iii) If a political subdivision establishes an appeals board, any appeal of a decision of a chief administrative officer shall be made to the appeals board.

# Political subdivisions

(7) Any political subdivision that adopts an ordinance or policy under Subsection (1) shall forward to state archives a copy and summary description of the ordinance or policy.

# Questions?



**Archives & Records Service**  
a division of the Department of Administrative Services

# Contact Information

<http://www.archives.state.ut.us/opengovernment/access-specialists.html>

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# Information

- ❖ State Archives: <http://www.archives.state.ut.us/>
- ❖ Records Management Training:  
<http://www.archives.state.ut.us/recordsmanagement/training.html>
- ❖ Utah Public Notice Website: <http://www.utah.gov/pmn/index.html>
- ❖ Open Records Portal: <http://openrecords.utah.gov/>
- ❖ State Records Committee: <http://www.archives.state.ut.us/src/index.html>
- ❖ GRAMA and Open Government: <http://www.archives.state.ut.us/opengovernment/index.html>
- ❖ Government Records Ombudsman:  
<http://www.archives.state.ut.us/recordsmanagement/ombudsman.html>