

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 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) 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.
- (3) Witnesses providing testimony shall be sworn in by the Committee Chair.
- (4) Questioning of the witnesses and parties by Committee members is permitted.
- (5) 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 pursuant to 63G-2-403(9).
 - (a) 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 via the Executive Secretary 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.
 - (b) Records provided by the governmental entity for in camera review by the Committee remain in the custody of the governmental entity. Records for in camera review are retained by the Committee for only the period of in camera review and all records are returned to the governmental entity at the conclusion of the in camera review.
- (6) 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, and must be presented prior to closing arguments.
- (7) 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.
- (8) 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.
- (9) The Committee may adjourn, reschedule, continue, or reopen a hearing on the motion of a member.
- (10) Except as expressly authorized by law, there shall be no communication between the parties and the members of the Committee concerning the subject matter of the appeal before the hearing or prior to the issuance of a final Decision And Order. Any other oral or written communication from the parties to the members of the Committee, or from the members of the Committee to the parties, shall be directed to the Executive Secretary for transmittal.
- (11) The following provisions govern any meeting at which one or more members of the Committee or a party appears telephonically or electronically, pursuant to Section 52-4-207.
 - (a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Division of State Archives, Salt Lake City, Utah.
 - (b) If one or more Committee members or parties may be participating electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Committee not participating electronically or telephonically will be meeting and where interested persons and the public may attend and monitor the open portions of the meeting.
 - (c) When notice is given of the possibility of a member of the Committee appearing electronically or telephonically, any member of the Committee may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Committee. At the commencement of the meeting, or at such time as any member of the Committee initially appears electronically or telephonically, the Committee Chair shall identify for the record each of those who are appearing telephonically or electronically. Votes by members of the Committee who are not at the physical location of the meeting shall be confirmed by the Committee Chair.
- (12)(a) Pursuant to Subsection 63G-2-401(5)(c) a petitioner may request a postponement of a hearing, with the consensus of the governmental entity. If the petitioner wishes to postpone the hearing or withdraw the appeal, the petitioner shall notify the Committee via the Executive Secretary and the governmental entity in writing no later than five days prior to the scheduled hearing date.
 - (b) The Committee Chair has the discretion to grant or deny a petitioner's request to postpone a hearing based upon: (i) the reasons given by the petitioner in his or her request, (ii) the timeliness of the request, (iii) whether petitioner has previously requested and received a postponement, (iv) any other factor determined to protect the equitable interests of the parties. If the request is granted, the Chair shall instruct the Executive Secretary to schedule the appeal for the next available hearing date pursuant to 63G-2-403(4)(a).
 - (c) The Chair will ordinarily deny a governmental entity's request to postpone the hearing, unless the governmental entity has obtained the petitioner's prior consent to reschedule the hearing date.

R35-1-3. Issuing the Committee Decision and Order.

- (1) The Decision and Order shall be signed by the Committee Chair and distributed by the Executive Secretary within seven business days after the hearing. Copies of each Decision and Order shall be distributed to the petitioner, the governmental entity and other interested parties. The original order shall be maintained by the Executive Secretary. A copy of the order shall be made available for public access at the Utah State Archives website.

R35-1-4. Committee Minutes.

- (1) Purpose. 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 Sections 52-4-203, 63G-3-201, and 63A-12.

(3) 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: August 7, 2020

Notice of Continuation: June 3, 2019

Authorizing, and Implemented or Interpreted Law: 63G-2-401(5)(c); 63G-2-403(9); 63G-2-403(4)(a); 63G-2-201; 63A-12-101; 52-4-203

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, 2019

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. 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.

(a) 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(1)(b). A copy of each decision to decline a hearing shall be retained in the file.

(b) 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), shall include a copy of the previous order of the Committee holding that the records at issue are appropriately classified.

(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 has not sufficiently or has 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 the following: 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; a copy of any records appeals; a copy of the final responses from the respondents containing their decisions regarding the records request and appeals; and a statement of relief sought. If any of the above have not been provided, the Executive Secretary shall notify the petitioner that a hearing cannot be scheduled until the proper information is submitted. The petitioner must provide the missing information within seven days of receipt of the notice in order for the notice of appeal to be considered filed pursuant to Subsections 63G-2-403(2) and (4)(a).

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

(5) An appeal pertaining to the Judiciary, Legislature, or to a political subdivision that has established a local appeals board that has not yet received and addressed the appeal, is not within the Committee's jurisdiction and will not be scheduled pursuant to Title 63G, Chapter 2, Part 7, Applicability to Political Subdivisions, the Judiciary, and the Legislature, and to Subsection 63G-2-402(1)(b).

(6) If a governmental entity requests to have an appeal dismissed by challenging the committee's jurisdiction based on failure of the petitioner to serve notice of appeal to the governmental entity pursuant to Subsection 63G-2-403(3)(a), the committee shall deny said request.

(7) The Executive Secretary shall report on appeals received 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 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 hearings held, withdrawn, and declined.

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

Date of Enactment or Last Substantive Amendment: October 16, 2020

Notice of Continuation: June 3, 2019

Authorizing, and Implemented or Interpreted Law: 63G-2-402(1)(b); 63G-2-403(1); 63G-2-403(2); 63G-2-403(3)(a); 63G-2-403(4); 63G-2-403(4)(b)(ii)(A); 63G-2-403(11)(b); 63G-2-502

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(15), 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(15)(a), 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.

(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: August 7, 2020

Notice of Continuation: June 3, 2019

Authorizing, and Implemented or Interpreted Law: 63G-2-403(15)

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 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: July 31, 2015

Notice of Continuation: June 3, 2019

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 seven days nor later than 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 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: July 31, 2015

Notice of Continuation: June 3, 2019

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