CHAPTER 1b

DEBT COORDINATION AND COLLECTION [REPEALED]

63-1b-1 to 63-1b-7. Repealed.

Repeals. — Laws 1995, ch. 354, § 8 repeals §§ 63-1b-1 to 63-1b-7, as enacted by Laws 1992, ch. 76, §§ 1 to 7, relating to collection of state debts, effective May 1, 1995. For present provisions, see Title 63A, Chapter 8.

CHAPTER 2

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PART 1

GENERAL PROVISIONS

63-2-103. Definitions.

As used in this chapter:

(1) "Audit" means:

(a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or

(b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.

(2) "Chronological logs" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show the time and general nature of police, fire, and paramedic calls made to the agency and any arrests or jail bookings made by the agency.

(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 63-2-201(3)(b).

(4) (a) "Computer program" means a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program.

(b) "Computer program" does not mean:

(i) the original data, including numbers, text, voice, graphics, and images;

(ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or

(iii) the mathematical or statistical formulas (excluding the underlying mathematical algorithms contained in the program) that would be used if the manipulated forms of the original data were to be produced manually.

(5) (a) "Contractor" means:

(i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or

(ii) any private, nonprofit organization that receives funds from a governmental entity.

(b) "Contractor" does not mean a private provider.

(6) "Controlled record" means a record containing data on individuals that is controlled as provided by Section 63-2-303.

(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.

(8) "Government audit agency" means any governmental entity that conducts audits.

(9) (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 Board, 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, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

(b) "Governmental entity" also means every office, agency, board, bureau, committee, department, advisory board, or commission of the entities listed in Subsection (9)(a) that is funded or established by the government to carry out the public's business.

(10) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.

(11) "Individual" means a human being.

(12) (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 (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 63-2-201(3)(b).

(13) "Person" means any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization.

(14) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.

(15) "Private record" means a record containing data on individuals that is private as provided by Section 63-2-302.

(16) "Protected record" means a record that is classified protected as provided by Section 63-2-304.

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

(18) (a) "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data, or other documentary materials regardless of physical form or characteristics:

(i) which are 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.

(b) "Record" does not mean:

(i) temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom he is working;

(ii) materials that are legally owned by an individual in his private capacity;

(iii) materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;

(iv) proprietary software;

(v) junk mail or commercial publications received by a governmental entity or an official or employee of a governmental entity;

(vi) books and other materials that are cataloged, indexed, or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material;

(vii) daily calendars and other personal notes prepared by the originator for the originator's personal use or for the personal use of an individual for whom he is working;

(viii) computer programs as defined in Subsection (4) that are developed or purchased by or for any governmental entity for its own use; or

(ix) notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary, an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function.

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

(20) "Records committee" means the State Records Committee created in Section 63-2-501.

(21) "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.

(22) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.

(23) "State archives" means the Division of Archives and Records Service created in Section 63-2-901.

(24) "State archivist" means the director of the state archives.

(25) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

History: C. 1953, 63-2-103, enacted by L. 1991, ch. 259, § 10; 1992, ch. 280, § 15; 1994, ch. 13, § 4.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, in Subsections (9)(a)(i) and (18)(a)(ix) substituted "Board of Pardons and Parole" for "Board of Pardons" and transposed Subsections (11) and (12), and likewise Subsections (14) and (15), to alphabetize the defined terms.

PART 2
ACCESS TO RECORDS

63-2-201. 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 63-2-203 and 63-2-204.

(2) All records are public unless otherwise expressly provided by statute.

(3) The following records are not public:

(a) records that are private, controlled, or protected under Sections 63-2-302, 63-2-303, and 63-2-304; and

(b) records 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 those records specified in Section 63-2-302, 63-2-303, or 63-2-304 may be classified private, controlled, or protected.

(5) (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Section 63-2-202, or Section 63-2-206.

(b) A governmental entity may disclose records that are private under Subsection 63-2-302(2) or protected under Section 63-2-304 to persons other than those specified in Section 63-2-202 or 63-2-206 if the head of a governmental entity, or a designee, determines that there is no interest in restricting access to the record, or that the interests favoring access outweighs the interest favoring restriction of access.

(6) (a) The disclosure of records to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including records 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.

(b) This chapter applies to records described in Subsection (a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

(7) A governmental entity shall provide a person with a certified copy of a record if:

(a) the person requesting the record has a right to inspect it;

(b) the person identifies the record with reasonable specificity; and

(c) the person pays the lawful fees.

(8) (a) A governmental entity is not required to create a record in response to a request.

(b) Upon request, a governmental entity shall provide a record in a particular format if:

(i) the governmental entity 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 its costs incurred in providing the record in the requested format in accordance with Section 63-2-203.

(c) Nothing in this section requires a governmental entity to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

(9) If a person requests copies of more than 50 pages of records from a governmental entity, and, if the records are contained in files that do not contain records that are exempt from disclosure, the governmental entity may:

(a) provide the requester with the facilities for copying the requested records and require that the requester make the copies himself; or

(b) allow the requester to provide his own copying facilities and personnel to make the copies at the governmental entity's offices and waive the fees for copying the records.

(10) (a) A governmental entity that owns an intellectual property right and that offers the intellectual property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to be in the public interest.

(b) Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the intellectual property right.

(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 persons to inspect and receive copies of a record under this chapter.

History: C. 1953, 63-2-201, enacted by L. 1991, ch. 259, § 12; 1992, ch. 280, § 18; 1994, ch. 194, § 1.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, added "in accordance with Section 63-2-203" at the end of Subsection (8)(b)(ii) and made stylistic changes.

63-2-202. 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 his legal representative dated no more than 90 days before the date the request is made; or

(iii) if the record is a medical record described in Subsection 63-2-302(1)(b), is a health care provider, as defined in Subsection 26-33a-102(7), if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

(e) any person to whom the record must be provided pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

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

(i) a physician, psychologist, certified social worker, insurance

provider or agent, or a government public health agency upon submission of 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 a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (b); and

(ii) any person to whom the record must be disclosed pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

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

(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.

(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; or

(c) any person to whom the record must be provided pursuant to a court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

(5) A governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, another state, the United States, or a foreign government only as provided by Section 63-2-206.

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

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

(a) the record deals with a matter in controversy over which the court has jurisdiction;

(b) the court has considered the merits of the request for access to the record; and

(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records;

(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) A governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

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

(ii) determines that the proposed research is bona fide, and that the value of the research outweighs the infringement upon personal privacy;

(iii) requires the researcher to assure the integrity, confidentiality, and security of the records and requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from disclosing the record in individually identifiable form, except as provided in Subsection (b), or from using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of his understanding of and agreement to the conditions of this subsection and his understanding that violation of the terms of this subsection may subject him to criminal prosecution under Section 63-2-801.

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

(c) A governmental entity may require indemnification as a condition of permitting research under this subsection.

(9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6) a governmental entity may disclose records that are private under Section 63-2-302, or protected under Section 63-2-304 to persons other than those specified in this section.

(b) Under Subsection 63-2-403(11)(b) the Records Committee may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

(c) Under Subsection 63-2-404(8) the court may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

History: C. 1953, 63-2-202, enacted by L. 1991, ch. 259, § 13; 1992, ch. 280, § 19; 1994, ch. 312, § 2.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, added Subsection (1)(d)(iii), in Subsection (2)(a)(i) inserted "insurance provider or agent, or a government public health agency" and deleted "notarized" before "release," and made stylistic changes.

63-2-203. Fees.

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

(2) 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:

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

(b) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request. The hourly charge may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request; provided, however, that no charge may be made for the first quarter hour of staff time; and

(c) 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) and (b).

(3) Fees shall be established as follows:

(a) Governmental entities with fees established by the Legislature shall establish the fees defined in Subsection (2), or other actual costs associated with this section through the budget process. Governmental entities with fees established by the Legislature may use the procedures of Section 63-38-3.2 to set fees until the Legislature establishes fees through the budget process. A fee set by a governmental entity in accordance with Section 63-38-3.2 expires on May 1, 1995.

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

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

(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 63-2-202(1) or (2); or

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

(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)(b); or

(b) inspecting a record.

(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 63-2-205.

(b) The adjudicative body hearing the appeal has the same authority when a fee waiver or reduction is denied as it has when the inspection of a public record is denied.

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

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

(8) A governmental entity may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50, or if the requester has not paid fees from previous requests. Any prepaid amount in excess of fees due shall be returned to the requester.

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

History: C. 1953, 63-2-203, enacted by L. 1991, ch. 259, § 14; 1992, ch. 280, § 20; 1994, ch. 194, § 2; 1995, ch. 20, § 114.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, in Subsection (1) deleted "or compiling a record in a form other than that maintained by the governmental entity" from the end of the first sentence and added the second sentence; added Subsections (2) and (6), redesignating the other subsections accordingly; in Subsection (3)(a) substituted "the fees defined in Subsection (2), or other actual costs associated with this section" for "fees" in the first sentence and "May 1, 1995" for "April 26, 1993" in the third sentence; and in Subsection (5)(a) added "except as permitted by Subsection (2)(b)."

The 1995 amendment, effective May 1, 1995, substituted "Section 63-38-3.2" for "Subsection 63-38-3(3)" in two places in Subsection (3)(a).

63-2-207. Subpoenas.

(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 63-2-204.

(2) (a) In judicial or administrative proceedings in which an individual is requesting discovery of records classified private, controlled, or protected under this act, or otherwise restricted from access by other statutes, the court, or an administrative law judge shall follow the procedure in Subsection 63-2-202(7) before ordering disclosure. Until the court or an administrative law judge orders disclosure, these records are privileged from discovery.

(b) If, the court or administrative order requires disclosure, the terms of the order may limit the requester's further use and disclosure of the record in accordance with Subsection 63-2-202(7), in order to protect the privacy interests recognized in this act.

(c) This section does not otherwise limit a person's right to obtain records through the procedures set forth in this chapter, unless the court or an administrative law judge includes such a limitation in its order.

History: C. 1953, 63-2-207, enacted by L. 1992, ch. 280, § 24; 1994, ch. 99, § 1.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, designated the former section as Subsection (1); deleted the former second sentence of Subsection (1) which read "Compliance with civil, criminal, administrative, and legislative discovery shall be governed by the applicable statutes and rules of procedure, not by this chapter"; and added Subsection (2).

PART 3
CLASSIFICATION

63-2-301. Records that must be disclosed.

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

(a) laws;

(b) names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked

per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of the governmental entity's former and present employees and officers 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;

(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63-2-304(15), (16), and (17);

(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, including the records of all votes of each member of the governmental entity;

(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;

(g) 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;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

(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; and

(k) summary data.

(2) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63-2-201(3)(b), Section 63-2-302, 63-2-303, or 63-2-304:

(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;

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304(34);

(g) chronological logs and initial contact reports;

(h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(i) empirical data contained in drafts if:

(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

(j) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

(k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;

(l) original data in a computer program if the governmental entity chooses not to disclose the program;

(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:

(i) 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;

(s) business licenses; and

(t) a notice of violation, a notice of agency action under Section 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

(3) The list of public records in this section is not exhaustive and should not be used to limit access to records.

History: C. 1953, 63-2-301, enacted by L. 1991, ch. 259, § 18; 1992, ch. 280, § 25; 1994, ch. 99, § 2; 1995, ch. 133, § 1; 1996, ch. 159, § 3.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, in Subsection (1)(b), inserted "from state appropriated funds."

The 1995 amendment, effective May 1, 1995, deleted "from state appropriated funds" after "compensation" in Subsection (1)(b) and changed "formal charges" to "charges on which the disciplinary action was based" in Subsection (2)(o)(ii).

The 1996 amendment, effective July 1, 1996, substituted "Division of Forestry, Fire and State Lands" for "Division of State Lands and Forestry" and added 'School and Institutional Trust Lands Administration" to the list of governmental entities set out in Subsections (1)(g) and (2)(p).

Cross-References. — Exemption for governmental records containing digital signature information, § 46-3-504.

63-2-302. 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;

(d) records received or generated for a Senate or House Ethics Committee concerning any alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if the ethics committee meeting was closed to the public;

(e) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

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

(ii) after the meeting, if the meeting was closed to the public; and

(f) 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.

(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 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection 63-2-302(1)(b);

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

(i) records described in Subsection 63-2-301(1);

(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;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

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

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.

History: C. 1953, 63-2-302, enacted by L. 1991, ch. 259, § 19; 1992, ch. 280, § 26; 1995, ch. 74, § 1; 1996, ch. 195, § 1.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, added "prior to the meeting, and after the meeting" to Subsection (1)(d), added Subsection (1)(e), and made related and stylistic changes.

The 1996 amendment, effective April 29, 1996, in Subsection (2)(d) substituted "a clearly unwarranted" for "an unwarranted" and made a punctuation change at the end of Subsection (2)(a).

63-2-304. Protected records.

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

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63-2-308;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(5) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this subsection does not restrict the right of a person to see bids submitted to or by a governmental entity after bidding has closed;

(6) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property; or

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property;

(7) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(8) 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;

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

(10) 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;

(11) 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;

(12) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(13) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(14) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(15) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(16) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(17) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8;

(18) personal files of a legislator, including personal correspondence to or from a member of the Legislature, but not correspondence that gives notice of legislative action or policy;

(19) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) for purposes of this subsection, a "Request For Legislation" submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator submits the "Request For Legislation" with a request that it be maintained as a protected record until such time as the legislator elects to make the legislation or course of action public;

(20) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(21) drafts, unless otherwise classified as public;

(22) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(23) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(24) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(25) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(26) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(27) records of a public institution of higher education regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings,

provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(28) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(29) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(30) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(31) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7, Open and Public Meetings;

(32) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(33) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(34) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(35) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(36) the name of a donor or a prospective donor to a governmental entity, including a public institution of higher education, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this subsection; and

(c) except for public institutions of higher education, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of his immediate family, or any entity owned or controlled by the donor or his immediate family; and

(37) the following records of a public institution of education, which have been developed, discovered, or received by or on behalf of faculty, staff, employees, or students of the institution: unpublished lecture notes,

unpublished research notes and data, unpublished manuscripts, creative works in process, scholarly correspondence, and confidential information contained in research proposals. Nothing in this subsection shall be construed to affect the ownership of a record.

History: C. 1953, 63-2-304, enacted by L. 1991, ch. 259, § 21; 1992, ch. 228, § 3; 1992, ch. 280, § 28; 1994, ch. 13, § 5; 1994, ch. 114, § 1; 1995, ch. 133, § 2; 1996, ch. 79, § 81.

Amendment Notes. — The 1994 amendment by ch. 13, effective May 2, 1994, substituted "Board of Pardons and Parole" for "Board of Pardons" twice in Subsection (12) and once in Subsection (33); deleted "and" from the end of Subsection (29); and added "and" to the end of Subsection (36).

The 1994 amendment by ch. 114, effective May 2, 1994, redesignated former Subsection (19) as Subsection (19)(a); added Subsection (19)(b); and made stylistic changes.

The 1995 amendment, effective May 1, 1995, made a punctuation correction in Subsection (19)(b) and substituted "of the" for "reflecting" in Subsection (27).

The 1996 amendment, effective April 29, 1996, in Subsection (31) deleted "of the" after "52-4-7" and "Act" after "Meetings."

PART 4
APPEALS

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

(1) A petitioner, including an aggrieved person who did not participate in the appeal to the governmental entity's chief administrative officer, may appeal to the records committee by filing a notice of appeal with the executive secretary no later than:

(a) 30 days after the chief administrative officer of the governmental entity has granted or denied the records request in whole or in part, including a denial under Subsection 63-2-204(7);

(b) 45 days after the original request for records if:

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

(ii) the chief administrative officer failed to make a determination under Section 63-2-401.

(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 records request; and

(c) the relief sought.

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

(4) No later than three business days after receiving a notice of appeal, the executive secretary of the records committee shall:

(a) 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 45 days after the date the notice of appeal was filed provided, however, the records committee may schedule an expedited hearing upon application of the petitioner and good cause shown;

(b) send a copy of the notice of hearing to the petitioner; and

(c) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:

(i) each member of the records committee;

(ii) the records officer and the chief administrative officer of the governmental entity from which the appeal originated;

(iii) any person who made a business confidentiality claim under Section 63-2-308 for a record that is the subject of the appeal; and

(iv) all persons who participated in the proceedings before the governmental entity's chief administrative officer.

(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) No later than ten 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. Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention. The person seeking intervention shall provide copies of the statement 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) The records committee's review shall be de novo.

(11) (a) No later than three 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) 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 outweighs the interest favoring restriction of access.

(c) In making a determination under Subsection (b), the records committee shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and 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 63-2-201(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 35 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 he considers the appeal denied.

History: C. 1953, 63-2-403, enacted by L. 1991, ch. 259, § 28; 1992, ch. 280, § 35; 1995, ch. 133, § 3.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, rewrote Subsection (4)(a), changing the requirements for scheduling an appeals hearing; subdivided and rewrote Subsection (5), making the submission of the statement mandatory and changing the time period from ten days to five days; changed the time period in Subsection (7) to reflect the change in Subsection (4); and added the second sentence in Subsection (9)(a).

63-2-404. Judicial review.

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

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

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

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

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

(b) The requester shall file a petition no later than:

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

(ii) 35 days after the original request if the governmental entity failed to respond to the request; or

(iii) 45 days after the original request for records if:

(A) the circumstances described in Subsection 63-2-401(1)(b) occur; and

(B) the chief administrative officer failed to make a determination under Section 63-2-401.

(3) The petition for judicial review shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain:

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

(b) a copy of the records committee order from which the appeal is taken, if the petitioner brought a prior appeal to the records committee;

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

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

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

(4) If the appeal is based on the denial of access to a protected record, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.

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

(6) The district court may review the disputed records. The review shall be in camera.

(7) The court shall:

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

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

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

(8) (a) The court 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 interest favoring access outweighs the interest favoring restriction of access.

(b) The court shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records.

History: C. 1953, 63-2-404, enacted by L. 1991, ch. 259, § 29; 1992, ch. 280, § 36; 1995, ch. 133, § 4.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, subdivided Subsection (1) and added Subsections (1)(c) and (1)(d).

PART 5

STATE RECORDS COMMITTEE

63-2-501. State Records Committee created — Membership — Expenses.

(1) There is created the State Records Committee within the Department of Administrative Services to consist of the following seven individuals:

(a) an individual in the private sector whose profession requires him to create or manage records that if created by a governmental entity would be private or controlled;

(b) the state auditor or the auditor's designee;

(c) the director of the Division of State History;

(d) the governor or the governor's designee;

(e) one citizen member;

(f) one elected official representing political subdivisions; and

(g) one individual representing the news media.

(2) The members specified in Subsections (1)(a), (e), (f), and (g) shall be appointed by the governor with the advice and consent of the Senate.

(3) (a) Except as required by Subsection (b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(c) Each appointed member is eligible for reappointment for one additional term.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

History: C. 1953, 63-2-501, enacted by L. 1991, ch. 259, § 30; 1992, ch. 280, § 38; 1994, ch. 99, § 3; 1996, ch. 194, § 15; 1996, ch. 243, § 127.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, in Subsection (1)(b), added "or the auditor's designee."

The 1996 amendment by ch. 194, effective April 29, 1996, added "with the advice and consent of the Senate" in Subsection (2).

The 1996 amendment by ch. 243, effective April 29, 1996, rewrote Subsection (2), revising provisions relating to terms of members; redesignated former Subsection (2)(c) as Subsection (3)(c); deleted former Subsection (2)(d), relating to filling vacancies; and added Subsections (3)(a), (3)(b), (4), and (5).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Coordination clause. — Laws 1996, ch. 194 and ch. 243 both amended this section; ch. 194, § 27 provides that the amendments in ch. 194 supersede any conflicting amendments in ch. 243.

63-2-502. State Records Committee — Duties.

(1) The records committee shall:

(a) meet at least once every three months;

(b) review and approve retention and disposal of records;

(c) hear appeals from determinations of access as provided by Section 63-2-403; and

(d) appoint a chairman from among its members.

(2) The records committee may:

(a) make rules to govern its own proceedings as provided by Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(b) by order, after notice and hearing, reassign classification and designation for any record series by a governmental entity if the governmental entity's classification or designation is inconsistent with this chapter.

(3) The records committee shall annually appoint an executive secretary to the records committee. The executive secretary may not serve as a voting member of the committee.

(4) Five members of the records committee are a quorum for the transaction of business.

(5) The state archives shall provide staff and support services for the records committee.

(6) Unless otherwise reimbursed, the citizen member, the individual in the private sector, and the representative of the news media shall receive a per diem as established by the Division of Finance in Section 63A-3-106.

(7) If the records committee reassigns the classification or designation of a record or record series under Subsection (2)(b), any affected governmental entity or any other interested person may appeal the reclassification or redesignation to the district court. The district court shall hear the matter de novo.

(8) The Office of the Attorney General shall provide counsel to the records committee and shall review proposed retention schedules.

History: C. 1953, 63-2-502, enacted by L. 1991, ch. 259, § 31; 1992, ch. 280, § 39; 1994, ch. 12, § 79; 1995, ch. 133, § 5.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, substituted "Section 63A-3-106" for "Section 63-1-14.5" in Subsection (6) and made a punctuation change.

The 1995 amendment, effective May 1, 1995, rewrote Subsection (3), adding the second sentence and substituting the annual appointment provision for an automatic appointment of the state archivist.

PART 7

APPLICABILITY TO POLITICAL SUBDIVISIONS, THE JUDICIARY, AND THE LEGISLATURE

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

(1) (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.

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

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

(d) Notwithstanding the adoption of an ordinance or policy, each political subdivision is subject to Parts 1 and 3, and Sections 63-2-201, 63-2-202, 63-2-205, 63-2-206, 63-2-601, 63-2-602, 63-2-905, and 63-2-907.

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

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

(g) The report required by Subsection (f) is notification to state archives of the political subdivision's retention schedules, designations, and classifications. The report is not subject to approval by state archives. If state archives determines that a different retention schedule is needed for state purposes, state archives shall notify the political subdivision of the state's retention schedule for the records and shall maintain the records if requested to do so under Subsection 63-2-905(2).

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

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

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

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

(d) provide standards for the management and retention of the records of the political subdivision comparable to Section 63-2-903.

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

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

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

(b) The policy or ordinance shall provide for:

(i) an appeals board composed of the governing body of the political subdivision; or

(ii) a separate appeals board composed of members of the governing body and the public, appointed by the governing body.

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

(6) Appeals of the decisions of the appeals boards established by political subdivisions shall be by petition for judicial review to the district court. The contents of the petition for review and the conduct of the proceeding shall be in accordance with Sections 63-2-402 and 63-2-404.

(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.

History: C. 1953, 63-2-701, enacted by L. 1991, ch. 259, § 35; 1992, ch. 280, § 43; 1994, ch. 99, § 4.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, added Subsection (1)(g).

PART 9

ARCHIVES AND RECORDS SERVICE

63-2-902. State archivist — Duties.

(1) With the approval of the governor, the executive director of the Department of Administrative Services shall appoint the state archivist to serve as director of the state archives. The state archivist shall be qualified by archival training, education, and experience.

(2) The state archivist is charged with custody of the following:

(a) the enrolled copy of the Utah constitution;

(b) the acts and resolutions passed by the Legislature;

(c) all records kept or deposited with the state archivist as provided by law;

(d) the journals of the Legislature and all bills, resolutions, memorials, petitions, and claims introduced in the Senate or the House of Representatives;

(e) Indian war records; and

(f) oaths of office of all state officials.

(3) (a) The state archivist is the official custodian of all noncurrent records of permanent or historic value that are not required by law to remain in the custody of the originating governmental entity.

(b) Upon the termination of any governmental entity, its records shall be transferred to the state archives.

History: C. 1953, 63-2-902, enacted by L. 1991, ch. 259, § 42; 1996, ch. 31, § 1.

Amendment Notes. — The 1996 amendment, effective April 29, 1996, added Subsection (2)(e) and redesignated former Subsection (2)(e) as (f).

63-2-905. Records declared property of the state — Disposition.

(1) All records created or maintained by a governmental entity of the state are the property of the state and shall not be mutilated, destroyed, or otherwise damaged or disposed of, in whole or part, except as provided in this chapter.

(2) (a) Except as provided in Subsection (b), all records created or maintained by a political subdivision of the state are the property of the state and shall not be mutilated, destroyed, or otherwise damaged or disposed of, in whole or in part, except as provided in this chapter.

(b) Records which constitute a valuable intellectual property shall be the property of the political subdivision.

(c) The state archives may, upon request from a political subdivision, take custody of any record series of the political subdivision. A political subdivision which no longer wishes to maintain custody of a record which must be retained under the political subdivision's retention schedule or the state archive's retention schedule shall transfer it to the state archives for safekeeping and management.

(3) It is unlawful for a governmental entity or political subdivision to intentionally mutilate, destroy, or otherwise damage or dispose of a record series knowing that such mutilation, destruction, or damage is in contravention of the political subdivision's or the state archive's properly adopted retention schedule.

History: C. 1953, 63-2-905, enacted by L. 1991, ch. 259, § 45; 1992, ch. 280, § 53; 1994, ch. 99, § 5.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, in Subsection (2)(c) substituted "political subdivision's retention schedule or the state archive's retention schedule" for "approved retention schedule"; and, in Subsection (3) inserted "intentionally," "knowing that such mutilation, destruction, or damage is" and "political subdivision's or the state archive's."

63-2-909. Records made public after 75 years.

(1) The classification of a record is not permanent and a record that was not classified public under this act shall become a public record when the justification for the original or any subsequent restrictive classification no longer exists. A record shall be presumed to be public 75 years after its creation, except that a record that contains information about an individual 21 years old or younger at the time of the record's creation shall be presumed to be public 100 years after its creation.

(2) Subsection (1) does not apply to records of unclaimed property held by the state treasurer in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

History: C. 1953, 63-2-909, enacted by L. 1991, ch. 259, § 49; 1995, ch. 198, § 9.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, changed "Title 78, Chapter 44" to "Title 67, Chapter 4a" and deleted "Uniform" before "Unclaimed" in Subsection (2).

Meaning of "this act." — The phrase "this act" in Subsection (1) means Laws 1991, ch. 259, which enacted this chapter.

CHAPTER 5
EMERGENCY MANAGEMENT

Section
63-5-4. Disaster Emergency Advisory Council created — Function — Composition — Expenses.
63-5-5. Hazardous Chemical Emergency Response Commission — Allocation of responsibilities — Local planning committees — Specified federal law considered law of state — Application to federal agencies and facilities.

63-5-4. Disaster Emergency Advisory Council created — Function — Composition — Expenses.

(1) A Disaster Emergency Advisory Council is created to provide advice to the governor on matters relating to state government emergency disaster response and recovery actions and activities.

(2) The council shall meet at the call of the governor.

(3) The Disaster Emergency Advisory Council comprises the:

(a) lieutenant governor;

(b) attorney general;

(c) president of the Senate;

(d) speaker of the House of Representatives;

(e) heads of the following state agencies:

(i) Public Safety;

(ii) Division of Comprehensive Emergency Management;

(iii) Building Board; and

(iv) Office of Planning and Budget;

(f) executive directors of the following departments:

(i) Transportation;