**R35. Government Operations, Records Committee.**

**R35-1. State Records Committee 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 before the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting on the Utah Public Notice Website.

(3) The Executive Secretary sets the agenda for the meeting. If the Committee Chair determines necessary, the Executive Secretary may postpone appeals to the next available meeting.

(4) With exception to disputed records that will be reviewed in camera during a hearing, a party to an appeal before the Committee, including any intervening or interested-third party, shall submit to the Executive Secretary no later than five business days before the parties' scheduled hearing all evidence the party desires the Committee consider, including a statement of facts, reasons, and legal authority supporting the party's position, witness list, and exhibits. The Committee may not accept nor consider evidence or materials submitted later than five business days before the scheduled hearing date.

(5)(a) Pursuant to Subsection 63G-2-401(5)(c) a party wishing to postpone an appeal shall notify the Committee via the Executive Secretary and the other party in writing with the reason for postponement.

(b) If the petitioner wishes to withdraw the appeal, the petitioner shall notify the Committee via the Executive Secretary and the governmental entity in writing no later than five days before the scheduled hearing date.

(c) The Committee Chair has the discretion to grant or deny a request to postpone a hearing based upon:

(i) the reasons given by in the request;

(ii) the timeliness of the request;

(iii) whether a party has previously requested and received a postponement;

(iv) whether the other party stipulated to the postponement; or

(v) any other factor determined to protect the equitable interests of the parties.

(d) If the request to postpone is granted, the Chair shall instruct the Executive Secretary to schedule the appeal for a later hearing date pursuant to Subsection 63G-2-403(4)(a).

(e) The Chair shall 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 or has provided a showing of good cause for the postponement.

**R35-1-2. Procedures for Appeal Hearings.**

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

(2) The Committee Chair shall swear in the parties.

(3) The Chair shall set the time limit for the parties to present their cases pursuant to Subsection 63G-2-403(8), but in no event may the Chair limit the parties' presentations to less than 5 minutes.

(a) The petitioner's and governmental entity's cases may consist of testimony, argument, relevant evidence, and any relevant witnesses.

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

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

(4)(a) If the appeal involves proper classification of a record, 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 Subsection 63G-2-403(9).

(b) 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 at least seven 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.

(c) 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 are returned to the governmental entity or destroyed, provided they are not the record copy, at the conclusion of the in camera review.

(5) Third party presentations may be permitted. No later than five days before the hearing, the third party shall notify the Executive Secretary of their intent to present. Third party presentations will be presented before closing arguments.

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

(7)(a) After the conclusion of the closing arguments, the Committee shall start deliberations. A Committee Member shall make a motion described in the list under Subsection R35-1-5(1). The Committee shall vote and make public the decision of the Committee during the hearing.

(b) In the event of a tie vote, the Committee Chair shall ask if the Committee wishes to continue deliberation. If so, deliberation continues and another motion may be made. If a tie vote occurs a second time, the Chair shall withdraw their vote to break the tie.

(8) At any time, the Committee may adjourn, reschedule, continue, or reopen a hearing on the motion of a member.

(9) 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 before the issuance of an 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.

(10) 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 as indicated on the public notice.

(b) Public notices of the meeting shall show if one or more Committee members or parties may be participating electronically or telephonically. 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. When conducting a meeting with any Board members participating telephonically or electronically, the Committee Chair will take votes by roll call.

(11) If the Committee determines at any time before, or during a hearing, that a necessary third party must either be added as a party to the appeal or otherwise be present or testify, the Committee may vote to continue the hearing to a later date, if necessary, and compel the third party's attendance by way of a subpoena.

(12) Nothing in this section precludes the Committee Chair from taking appropriate measures necessary to maintain the order and integrity of the hearing.

**R35-1-3. Burden of Proof.**

(1)(a) In cases where the appeal concerns whether the governmental entity possesses or maintains the requested records, the governmental entity must show by a preponderance of the evidence that its search for the requested records was reasonable.

(b) Upon the governmental entity establishing by a preponderance of the evidence that its search was reasonable, the burden of proof shifts to the petitioner who must show by a preponderance of the evidence that the search efforts were not reasonable.

(2) In hearings concerning whether a person is a vexatious requester, the Committee shall examine the totality of the circumstances in determining that the person is a vexatious requester as outlined in Subsection 63G-2-209(9).

**R35-1-4. Vexatious Requester Hearing Procedures.**

(1) When hearing a petition to declare a person a vexatious requester, the Committee shall hold the hearing in accordance with Section R35-1-2.

(2) If at any time the Committee determines that the matter being heard involves issues outlined in Subsection 52-4-205(1), then the Committee may move to close the hearing to the public.

**R35-1-5. Issuing the Committee Decision and Order.**

(1) The Committee may issue the following Orders:

(a) grant the petitioner's appeal in whole or in part;

(b) deny the petitioner's appeal in whole or in part;

(c) continue the hearing to a later date;

(d) deny or allow a vexatious requester hearing;

(e) declare a person a vexatious requester; or

(f) require a governmental entity to make redactions in the record, remove redactions, or take other action necessary to carry out the Decision and Order.

(g) default in favor of one party due to the lack of attendance of the other party.

(2) In its Orders, the Committee may, as needed to comply with Subsection 63G-2-403(12)(a), cite to and analyze legal authority not voiced in its deliberations as long as the cited authority supports the dispositive motion the Committee voted upon in the hearing.

(3)(a)(i) The Committee Chair or Chair pro tem shall sign the Decision and Order; and

(ii) the Executive Secretary shall distribute the Decision and Order within seven business days after the hearing.

(b) The Executive Secretary shall distribute copies of each Decision and Order to the petitioner, the governmental entity, and other interested parties. The Committee shall maintain the original Order.

(4) The Committee shall make a copy of the Decision and Order available for public access on the Utah State Archives website.

(5) Before either party appeals an Order pursuant to Section 63G-2-404, the Committee may withdraw its Order by delivering notice to the parties of the withdrawal. Upon the withdrawal, the Executive Secretary shall add the withdrawn Order to the agenda of the next regularly scheduled public Committee meeting.

**R35-1-6. 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 Division of Archives and Records Service.

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

(b) Written minutes shall be read by members before the next scheduled meeting, including electronic meetings.

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

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

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

(f) When the minutes are "Approved" they will be 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, vexatious requester hearings**

**Date of Last Change: June 18, 2024**

**Notice of Continuation: May 20, 2024**

**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**