

## **R124, Government Records Access and Management<sup>1</sup>**

**R124-1** The following policy has been codified as Utah Administrative Code R765-124.<sup>2</sup>

### **R124-2 References**

- 2.1** Utah Code § 63G-2, Chapter 2, Rules for Requests for Records
- 2.2** Utah Code § 63G-4, Administrative Procedure Act
- 2.3** Utah Code § 63A-12-104(2), Rulemaking Authority
- 2.4** Utah Code § 53B-16, Part 3, Higher Education – Restricted Records
- 2.5** The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g
- 2.6** Board Policy R134, Informal Adjudicative Proceedings, under the Utah Administrative Procedures Act

### **R765. Higher Education (Utah Board of), Administration.**

#### **R765-124. Government Records Access and Management.**

##### **R765-124.1. Purpose.**

The purpose of this rule is to outline requirements and a fee schedule for records access and management matters for the Utah Board of Higher Education and Office of the Commissioner of Higher Education pursuant to Title 63G, Chapter 2, Government Records Access and Management Act.

##### **R765-124.2. Authority.**

---

<sup>1</sup> *Adopted June 6, 2024.*

<sup>2</sup> This administrative rule must also be approved by the Utah Office of Administrative Rules and minor, non-substantive edits to conform with the Utah Administrative Code style guide may be made.

Subsection 63G-2-204(3) authorizes this rule.

### **R765.124.3. Definitions.**

(1) “Archives” means Utah Division of Archives and Records Service.

(2) “Board” means Utah Board of Higher Education.

(3) “Classify” or “Classification” means determining, according to GRAMA, whether a record series, record, or information within a record is public, private, controlled, protected, or access is restricted from disclosure according to Subsection 63G-2-201(3).

(4) “Commissioner” means Commissioner of Higher Education.

(5) “Custody” means the guardianship of records and manuscripts which may include both physical possession, which is protective responsibility, and legal title, which is legal responsibility.

(6) “Designate” or “Designation” means indicating, based on the records officer’s familiarity with a record series, the primary classification that a majority of records in a record series would be given if classified.

(7) “GRAMA” means the Government Records Access and Management Act.

(8) “OCHE” means Office of Commissioner of Higher Education.

(9) “Record” is as defined by Subsection 63G-2-103(25).

(10) “Records Officer” is the individual appointed by the Commissioner and certified by archives to work with archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

### **R765.124.4. Records Officer.**

The records officer shall comply with all GRAMA requirements.

### **R765-124-5. Designation of Records.**

(1) The records officer shall designate the classification of each record or record series in the custody of the board or OCHE when a written request is made under Section R765-124.7 as either public, private, controlled, protected, or restricted from disclosure under Subsection 53B-16-302 or Subsection 63G-2-201(3).

(2) The records officer shall report the designations for a record series to archives in accordance with Section 63G-2-307.

#### **R765-124-6. Records Designated as Private or Controlled.**

(1) When a record is designated as private or controlled, OCHE:

(a) shall file a statement with archives explaining the purposes for which the records are collected and used according to Section 63G-2-601;

(b) shall only use the record for the purposes listed in the statement; and

(c) may share the records with other governmental entities, subject to the restrictions in Section 63G-2-206.

#### **R765-124-7. Requests for Access to Records.**

(1) Each requester of records shall:

(a) submit the request in writing and direct it to the records officer at GRAMA Request, 60 South 400 West, Gateway Building 2, Salt Lake City, UT 84101, or by email to the records officer;

(b) use the OCHE GRAMA Request for Records Form; and

(c) include in the request the requestor's name, mailing address, daytime phone number, if available, and a description of the record requested that identifies the record with reasonable specificity according to Section 63G-2-204.

(2) Each requester may not direct an initial request to any board member, OCHE staff, or administrator.

#### **R765-124-8. Fees.**

(1) As authorized by Section 63G-2-203, OCHE may charge a reasonable fee to cover OCHE's actual cost of providing a record, which fee may include:

(a) the cost of staff time for compiling the records to meet an individual's request;

(b) cost of staff time for search and retrieval; or

(c) cost of production of the record.

(2) OCHE may not charge a fee for:

(a) reviewing a record to determine whether it is subject to disclosure, except as allowed under Subsection 63G-2-203(5)(b)(i);

(b) inspecting a record; or

(c) the first quarter hour of staff time spent in responding to a request, except as provided in Subsection R765-124-8(4)(d).

(3) If the fees are expected to exceed \$50 or the requester has not paid fees from a previous request, OCHE may require payment of past fees and future estimated fees before beginning to process a request.

(4) OCHE shall charge the following fees for record requests:

(a) The fee for photocopies shall be:

(i) no fee for the first 10 double-sided standard size, non-color white copies of a record request;

(ii) \$.25 per page for standard size, non-color white copies;

(iii) \$.40 per page for standard size, color copies;

(iv) \$1.00 per page for 11 X 17 copies; and

(v) actual production cost for other odd sized copies.

(b) The fee for faxing documents shall be \$1 per page plus telephone charges for long distance over 5 pages.

(c) The fee for certifying a document shall be \$5.00 per certification.

(d) The fee for staff time required to search, compile, or otherwise prepare a record shall be the actual cost required to search, compile, and otherwise prepare records, including electronic records, not to exceed the salary of the lowest paid employee at OCHE who, in the discretion of the record's custodian, has the necessary skill and training to perform the request; except that OCHE shall not charge staff time for the first quarter hour of responding to a record request unless the requester:

(i) is not a Utah media representative; and

(ii) previously submitted a separate request within the 10-day period immediately before the date of the record request to which OCHE is responding.

(e) The fee for mailing and shipping shall be \$5.00 for staff mail preparation time, plus actual mailing costs if greater than \$2.

(f) The fee for other supplies, such as CD's, DVDs, and thumb drives shall be \$10 per item.

(g) The fee for other services, such as fees for third party services, shall be OCHE's actual cost.

(5) Any requester may request a fee waiver, provided that:

(i) the request fits within the limited circumstances allowed under GRAMA; and

(ii) the individual provides appropriate documentation and support to OCHE.

(6) Any requester may appeal the denial of a waiver under Section R765-124-12

### **R765-124-9. Vexatious Requests.**

In accordance with Subsection 63G-2-201(7)(a)(vi), OCHE shall not fulfill a person's records request if the person is determined to be a vexatious requester as defined by Section 63G-2-209.

#### **R765-124-10. Access to Records for Research Purposes.**

OCHE's disclosures of records for research purposes shall be made according to Subsection 63G-2-208(8).

#### **R765-124-11. Intellectual Property Rights.**

The Commissioner, or the Commissioner's designee, shall make each determination regarding the duplication and distribution of materials held by OCHE and for which the board or OCHE owns the intellectual property rights, as permitted by Subsection 63G-2-201(11).

#### **R765-124-12. Request Amending a Record.**

(1) Any individual may contest the accuracy or completeness of any public, private, or protected record concerning the individual by requesting OCHE to amend the record as outlined in Section 63G-2-603.

(2) If OCHE denies the request to amend the record, the requester may:

- (i) submit a written statement contesting the information in the record; or
- (ii) appeal the denial as provided under Subsection 63G-2-603(7).

(3) Upon receipt of a requester's written statement contesting the information, OCHE shall comply with the requirements of Subsection 63G-2-603(6)(b).

#### **R765-124-13. Appeal to the Commissioner of Higher Education.**

(1) Each requester may appeal the denial of access to a requested record to the Commissioner as provided under Section 63G-2-401 within 30 days after OCHE sends a notice of denial under Section 63G-2-205 or the record request is considered denied under Subsection 63G-2-204(9), if that subsection applies.

(2) Each requester who is denied access to any record of which the Commissioner is the subject of the record may appeal the denial directly to the chair of board.

#### **R765-124-14. Weighing of Privacy and Access Interests.**

The Commissioner, or the Commissioner's designee, may weigh privacy interests against access interests and allow access to specific private or protected records if the interests favoring access outweigh the interests favoring restriction of access as provided under Subsection 63G-2-201(5)(b).