

GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT (GRAMA)

Utah Code Title 63G Chapter 2



Legislative Intent

➤ Policy Considerations

- Public right of access: Records are public unless expressly provided otherwise by statute.
- Individual right of privacy regarding personal data gathered by governmental entities.
- Public policy interest in restricting access to certain records for the public good.

➤ Intent

- Promote easy and reasonable access to records.
- Specify when public interest in restricting access prevails.
- Prevent abuse of confidentiality by government.
- Favor public access when countervailing interests are equal.

Definition of “Record” under GRAMA?

Utah Code § 63G-2-103(22)

“Record” means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:

- (i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and
- (ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

What is NOT a Record under GRAMA?

- Personal notes/communications
 - Prepared or received in non-official capacity; OR
 - Unrelated to public business.
- Individually owned materials.
- Temporary draft or “similar materials.”
 - Prepared by originator or assistant for personal use.
 - Not circulated externally or relied upon for policy.
- Daily calendar or other personal notes.
- Copyright or patent protected records.
- Library materials
- Security measures
- Records governed by specific federal laws
 - HIPPA
 - Federal Education Rights and Privacy Act (FERPA)

Public Records

Utah Code § 63G-2-301

➤ Mandatorily Public -- 301(2)

- Laws (a)
- Certain employee info. (name, title, pay) (b)
- Final opinions (c)
- Open meeting records (e)
- Contractor compensation (j)

➤ Normally Public -- 301(3)

- Admin. staff manuals, instructions, policy statements. (a)
- Contracts (d)
- Drafts circulated or relied upon in policy making (j)-(k)
- Employee formal charges or discipline after finalized. (o)
- Mineral production records (p)

Private Records

Utah Code § 63G-2-302

- **Mandatorily Private -- 302(1)**
 - Social service, welfare records (a)
 - Medical records (b)
 - Library records (c)
 - Employee home address, telephone, SSN etc. (g)
 - Criminal background check or credit history. (x)

- **Normally Private -- 302(2)**
 - Employee or applicant information* (a)
 - Financial information (b)
 - “Clearly unwarranted invasion of personal privacy” (d)
 - “Vulnerable adult” abuse/neglect (f)
 - Body-cam footage in some instances (g)

Protected Records

Utah Code § 63G-2-305

- Some common types of protected records include:
 - Trade secrets and sensitive commercial info. (1)-(2)
 - Procurement--unfair advantage (6)
 - Ongoing enforcement action or investigations (Applies to OSA) (10)
 - Jeopardize life or safety (11)
 - Jeopardize security of government property (12)
 - Correctional facilities, prisoner info. (13)
 - Audit planned or in progress (16)
 - Attorney client privilege (17)
 - Attorney work product (18)
 - Drafts (22)

Protected Records (Cont.)

Utah Code § 63G-2-305

- Personal recommendations (25)
- Location of protected resources (26)
- Higher education tenure, admissions etc. (28)
- Closed meetings (32)
- Ongoing settlement negotiations (33)
- Charitable donor info. (37)
- Accident reports (38)
- Explosives (42)
- Individual home address, phone numbers (51)
- Water management plans (59)
- Automated license plate reader info (64)
- Crime victim info. (65)

Reclassifying Records

- Records can be reclassified at any time. 63G-2-307(2)
- Weighing Authority -- 63G-2-201(5)(b)
 - Govt. entity can disclose a record that is Normally Private under 63G-2-302(2) or Protected under 63G-2-305 to anyone if entity head or designee determines that the interests favoring access equal or outweigh interest in restricting access.
 - **Originating entity must conduct “conscientious and neutral” weighing analysis in every instance.**
Deseret News v. Salt Lake Cty., 2008 UT 26, ¶ 13, 182 P.3d 372.
- Segregation (redaction) -- 63G-2-308
 - Must redact non-public information and provide remaining records unless remainder would be unintelligible.

Governmental Sharing

Utah Code § 63G-2-206

- May share to following without written assurance:
 - Archives, repository
 - Investigative or enforcement agencies, if necessary.
 - Auditors
 - Legislature

- May provide to other entities with written assurance that:
 - Record is necessary to entity's duties or functions.
 - Will not be used for unintended purpose.
 - Public benefit outweighs individual privacy right.

- Must provide as required by law

Governmental Sharing (cont.)

Utah Code § 63G-2-206(4)-(5)

- Before sharing any record, originating entity **MUST**:
 - Classify the record and inform the recipient of the record's classification and accompanying restrictions on access.
- If recipient is not an entity subject to GRAMA, the originating entity must also obtain recipient's written agreement to abide by restrictions.
- Requirements do not apply if governed by other law.
- 2019 Amendment prohibits further release of shared record by receiving entity. Utah Code § 63G-2-204(2)(a).
 - **Must refer requester to originating entity.**

Records Requests

Requirements for submitting GRAMA requests.
Utah Code § 63G-2-204

- Written request containing:
 - Person's name (def. includes business but not govt. entity).
 - Mailing address
 - Telephone number (email optional)

- Description identifying the requested records with reasonable specificity.
 - Reasonable person can understand what records are being requested.
 - Not same as narrow v. broad.

Response Deadlines

Utah Code § 63G-2-204(4)

- Normal Request: As soon as reasonably possible but no later than 10 business days.
- Expedited Request: As soon as reasonably possible but no later than 5 business days.
 - Requester must demonstrate that the request primarily benefits the public rather than a person.
 - Media requests presumed to benefit public.
- Failure to timely respond amounts to denial, triggering appeal rights.
- Extensions permitted under “Extraordinary Circumstances”

Fees

Utah Code § 63G-2-203

- May charge reasonable fee to cover actual cost of providing record.
 - Can charge for search, compilation, redaction etc.
 - Fees must be established by policy, approved by Executive Officer.
 - Cannot charge to inspect a record.
 - Cannot charge for time spent reviewing for classification.
 - Cannot charge for first 15 minutes of staff time.
 - Rate cannot exceed salary of lowest paid employee able to perform work (in discretion of records custodian).
 - Deposit allowed if estimated fee exceeds \$50.
 - Encouraged (but not required) to waive fees in certain cases.
 - ❖ Fee waiver denial is NOT the same as denying access (no weighing analysis). Sole question is whether denial of fee waiver is reasonable. *SLC v. Jordan River Restor. Network* (2018 Utah 62)