

Records Access I: Public Records Webinar

Nova Dubovik

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June 23, 2017



GET STARTED

- Recommend a copy of GRAMA
- What do you want learn?
- What questions do you have?

Objective

- Legislative intent
- Who can access public, private, controlled, and protected records
- How to process a GRAMA request
- Classify and segregate information
- Appeals process
- 2017 GRAMA Updates

Utah Government Records Ombudsman

- Appointed by Archives Director
- Assists Public and Governmental entities
- Required to understand GRAMA
- Mediates disputes between parties
- Separate from the records committee
- Your government records ombudsman is [Rosemary Cundiff](#)

A photograph of the Utah State Capitol building, showing its classical architecture with columns and a pediment. The building is partially obscured by a white diagonal shape that serves as a background for the text.

GRAMA Defined

Government Records Access and Management Act

- Passed in 1991-1992
- Utah basic records law
- Guideline for disclosure and restrictions

A photograph of the Utah State Capitol building, showing its classical architecture with columns and a pediment. The building is partially obscured by a white diagonal shape that serves as a background for the text.

GRAMA Defined

Government Records Access and Management Act

- Classification structure for records
 - Public
 - Private
 - Controlled
 - protected
- In 2008 law was remodified and Public Records Management Act (U.C. 63A-12) was created

SECTION ONE

General Provisions

- 63G-2-101 Title
- 63G-2-102 Legislative intent
- 63G-2-103 Definitions
- 63G-2-104 Administrative Procedures Act not applicable
- 63G-2-105 Confidentiality agreements
- 63G-2-106 Records of security measures
- 63G-2-107 Disclosure of records subject to federal law
- 63G-2-108 Certification of records officer

A photograph of the Utah State Capitol building, showing its classical architecture with columns and a pediment. The building is partially obscured by a white diagonal shape that serves as a background for the text.

Legislative Intent

- Legislative Intent: 63G-2-102
 - Promote easy and reasonable access to public records
 - Individual's information protected from public disclosure
 - Specify when interest in restriction outweighs access
 - Favor public access
 - Establish fair and reasonable records management practices

Definitions

- 63G-2-103(2) Chronological logs
 - Summary records
 - Time and general nature of calls
 - Arrests or jail bookings

Definitions

- 63G-2-103(3) and (7). Classification and Designation.
- GRAMA establishes records classifications. "Private" and "Controlled" records protect individual privacy. "Protected" records restrict access for the public good.
- GRAMA also recognizes that access to some records may be restricted by another law or statute.

Definitions

- 63G-2-103(3) and (7). Classification and Designation.
- Classification is the process of identifying the **access rights** based on the **content of the record**, and records must be classified in response to a GRAMA request.
- Designation is the process of determining what the **primary classification** would be in review of a **records series as a whole**.

Definitions

- 63G-2-103(11)(a-b) Governmental Entity
 - Public agency (state and local)
 - Exists to carry out public business
 - Funded by public tax dollars

Definitions

- 63G-2-103(14) Initial contact report
 - Initial written or recorded report, prepared by Peace Officers, the report may describe:
 - Date, time, location, and nature of complaint, incident, or offense
 - Names of victims
 - Nature or general scope of agency initial action
 - General nature of injuries/estimate of damage
 - Name, address, person arrested or charged
 - Identity of public safety personnel, **except**
 - Undercover personnel or prosecuting attorney involved in responding to the initial incident

SEATTLE POLICE DEPARTMENT		INCIDENT REPORT		59	<input checked="" type="checkbox"/> INCIDENT <input type="checkbox"/> INCIDENT AND ARREST <input type="checkbox"/> ARREST ONLY		INCIDENT NUMBER 04-136391	
DO NOT DISCLOSE THE PERSON MAKING THIS REPORT HEREBY DECLARES THE FACTS HEREIN ARE TRUE AND CORRECT, AND UNDERSTANDS THAT BY FILING A FALSE REPORT, THEY MAY BE SUBJECT TO CRIMINAL PROSECUTION. X						<input type="checkbox"/> HAZARD TO OFFICER <input type="checkbox"/> DOMESTIC VIOLENCE <input type="checkbox"/> BIAS CRIME		
IDENT CLASSIFICATION SUSPICIOUS		TOOL/WEAPON USED		METHOD OF TOOL/WEAPON USE				
LOCATION 5300 34 AV NW		FIRM NAME BALLARD LOCKS/BRIDGE		CENSUS 032		BEAT B3		
TYPE OF PREMISE (FOR VEHICLES STATE TYPE AND WHERE PARKED) BRIDGE		POINT OF ENTRY						
DATE/TIME REPORTED 4/5/04 1403		DAY OF WEEK MON		DATE(S) / TIME(S) OCCURRED 4/5/04 APPROX. 1403 HRS		DAY(S) OF WEEK MON.		
PROPERTY STOLEN / RECOVERED (PROPERTY FORM 5.37.1 MUST BE ATTACHED)		<input type="checkbox"/> NOTHING TAKEN <input type="checkbox"/> UNKNOWN AT TIME OF REPORT		<input type="checkbox"/> VICTIM FOLLOW-UP LEFT				
EVIDENCE SUBMITTED		<input type="checkbox"/> FINGERPRINT SEARCH MADE <input type="checkbox"/> FINGERPRINTS FOUND		<input type="checkbox"/> LAB EXAM REQUESTED		<input type="checkbox"/> INJURED <input type="checkbox"/> HAS USABLE TESTIMONY <input type="checkbox"/> DO NOT DISCLOSE		
CODE C (PERSON REPORTING, COMPLAINANT)		V (VICTIM)		W (WITNESS)				
CODE C	NAME (LAST, FIRST, MIDDLE) [REDACTED]	RACE/SEX/D.O.B. (OPTIONAL)	HOME PHONE	HOURS				
ADDRESS 34 AV. NW, SEATTLE	ZIP CODE	OCCUPATION (OPTIONAL)	WORK PHONE	HOURS				
CODE	NAME (LAST, FIRST, MIDDLE)	RACE/SEX/D.O.B. (OPTIONAL)	HOME PHONE	HOURS				
ADDRESS	ZIP CODE	OCCUPATION (OPTIONAL)	WORK PHONE	HOURS				
NAME (LAST, FIRST, MIDDLE) SPIERS, IAN V. J.	RACE/SEX/D.O.B. B/M	HEIGHT 5'11	WEIGHT 185	HAIR BLK	EYES BRN	SKIN TONE MED	BUILD MED	
ADDRESS [REDACTED] SEATTLE	HOME PHONE	WORK PHONE	WORK HOURS	OCCUPATION	EMPLOYER/SCHOOL			
CLOTHING, SCARS, MARKS, TATTOOS, PECULIARITIES, A.K.A.		RELATIONSHIP TO VICTIM						
BA/CIT. NO.	CHARGE DETAILS (INCLUDE ORDINANCE OR R.C.W. NUMBER AND CHARGE NARRATIVES) I + R		<input type="checkbox"/> BOOKED <input type="checkbox"/> CITED		<input type="checkbox"/> Y.S.C. <input type="checkbox"/> K.C.J.			
ADDITIONAL PERSONS - CODE, NAME, RACE, SEX, D.O.B., ADDRESS, INJURY, HOSPITALIZATION, HOME AND WORK PHONES, HOURS, AND IF DISCLOSURE OF NAME IS PERMITTED.		ADDITIONAL SUSPECTS - DETAIL INFORMATION IN SAME ORDER AS SUSPECT BLOCK.		VICTIM'S INJURIES - DETAILS AND WHERE MEDICAL EXAM OCCURRED.		PROPERTY DAMAGED - DESCRIBE AND INDICATE AMOUNT OF LOSS.		PHYSICAL EVIDENCE - DETAIL WHAT AND WHERE FOUND, BY WHOM, AND DISPOSITION.
VEHICLE USED BY SUSPECT AND DISPOSITION.		NAME, ADDRESS, PHONE NUMBER OF JUVENILE'S PARENT(S)/GUARDIAN(S). NOTE IF CONTACTED AND IF INCIDENT ADJUSTED.		LIST STATEMENTS TAKEN AND DISPOSITION.		RECONSTRUCT INCIDENT AND DESCRIBE INVESTIGATION.		OUTLINE TESTIMONY OF PERSONS MARKED "HAS USABLE TESTIMONY" ON FRONT.
DOCUMENT ADDITIONAL CONTACT NUMBERS - CELL PHONE, PAGER, OR MESSAGE.		PHONE FOR INVOLVED PERSONS.						
5 RED/HON/CIV3D/LIC.# [REDACTED]								
7 [REDACTED] REPORTED THIS WAS 2ND TIME HE HAD SEEN S#1 PHOTOGRAPHING THE BRIDGE AND WRITING NOTES AS HE DID, I CONTACTED S#1 WHO SAID HE WAS PHOTOGRAPHING THE BRIDGE AND THE NOTES WERE CAMERA SETTINGS FOR HIS PHOTOGRAPHY CLASS AT SHORELINE COMM. COLLEGE.								
I HEREBY CERTIFY (DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THIS REPORT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF (RCW 9A.72.085)								
PRIMARY OFFICER'S SIGNATURE G. BASELEY		SERIAL # 5571		UNIT # 622		DATE SIGNED 4/5/04		SEATTLE, WA
SECONDARY OFFICER S. KIM		SERIAL 5955		UNIT 622		APPROVING OFFICER J. JONES		SERIAL 6105
DISTRIBUTION: PRECINCT ()		<input type="checkbox"/> CRIMES AGAINST PERSONS <input type="checkbox"/> CRIMES/PROPERTY		<input type="checkbox"/> COURT UNIT <input type="checkbox"/> CRIME ANALYSIS		<input type="checkbox"/> K-9 UNIT <input checked="" type="checkbox"/> OTHER		PAGE 1 OF 1

Definitions

63G-2-103(14)

(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 -103(14)(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 63G-2-201(3)(b).**

Definitions

- 63G-2-103(13) and (17). Individuals and Person.
- GRAMA refers often to a person, especially in provisions of access and fees.
- It is important to remember that an individual is defined as a human being.
- Person is much broader and includes an individual, persons, and organizations.

Definitions

- 63G-2-103(21). Public Records.
- A public record is a record that is not private, controlled, or protected and that is not exempt from disclosure; therefore, all records are public unless expressly restricted by law.

Definitions

63G-2-103

(22) (a) "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

Definitions

63G-2-103

(22) (a) "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

Definitions

63-2-103(22)(b)

What is not a record?

- Personal emails and documents that are not work-related
- Temporary drafts created for personal use
- Books contained in a library
- Junk mail or spam
- Computer programs



Definitions

- 63G-2-103(23) Record series
 - Group of records that may be treated as a unit for purposes of designation, description, management, or disposition.
 - Example:
 - Arrest records
 - Criminal history records
 - Daily activity reports
 - Homicide, violent felonies & sex crime investigation files
 - Misdemeanor & felony investigation files
 - Mug shot records
 - Suicide investigation records

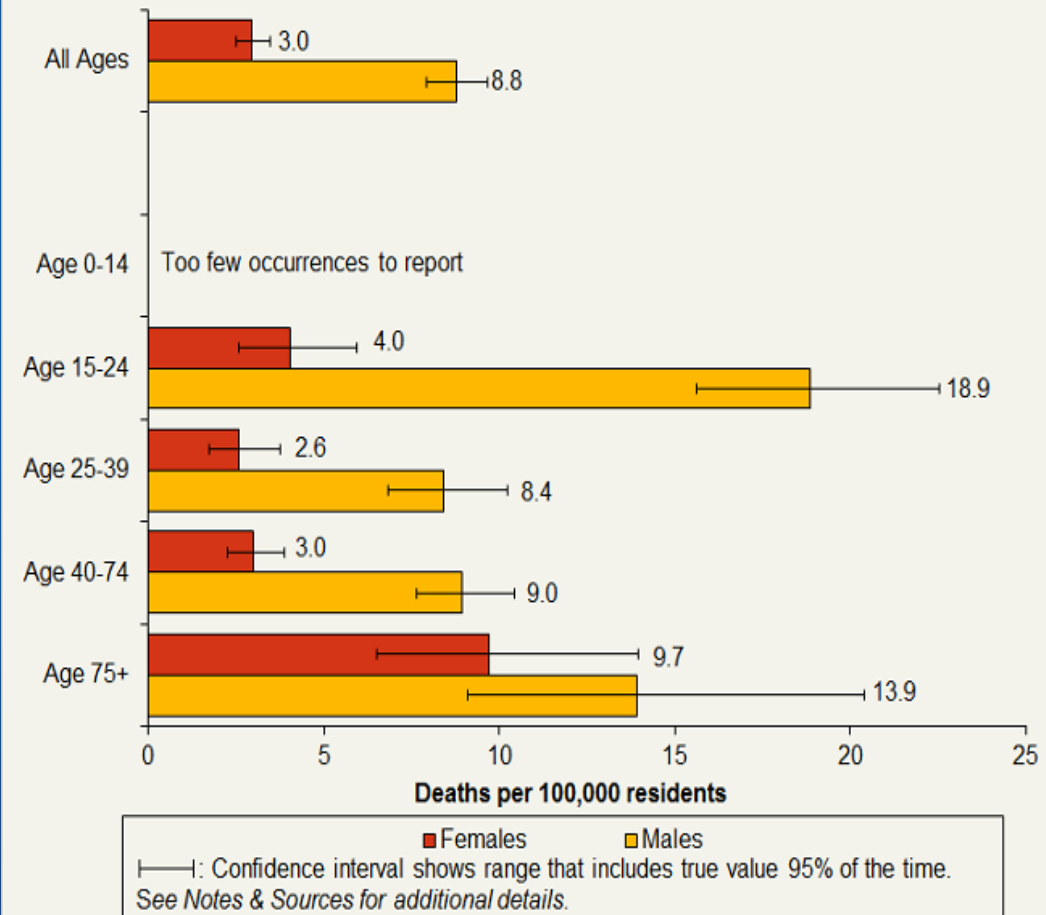
Definitions

- 63G-2-103(25) Records Officer
 - Appointed by chief administrative officer
 - Works with state archives
 - Responsibilities include:
 - Care
 - Maintenance
 - Scheduling
 - Designation and Classification records, series
 - Disposal
 - Preservation

Definitions

- 63G-2-103(30) Summary data
 - Compilation of data gathered from private, controlled, or protected information that does disclose the restricted information.

Deaths due to motor vehicle injury by age, gender, King County residents (2006-2010 average)



Records of Security Measures

- 63G-2-106. NOT subject to GRAMA.
 - Security plans
 - Security codes, combinations, passwords
 - Passes, keys
 - Security procedures
 - Building and public works design



Subject to Federal Law

- 63G-2-107. Disclosure of records subject to federal law.
 - 1) Notwithstanding Subsection 63G-2-201(6), **this chapter does not apply** to a record containing **protected health information** as defined in 45 C.F.R., Part 164, Standards for Privacy of Individually Identifiable Health Information, if the record is:
 - (a) **controlled** or **maintained** by a governmental entity; and
 - (b) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information.
 - (2) The **disclosure of an education record** as defined in the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99, that is **controlled** or **maintained** by a governmental entity shall be governed by the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.
- **Note: Federal laws supersede state laws.**

Certification of Records Officer

- 63G-2-108. Chief Administrative Officer
 - Establish records management program
 - Appoint records officer(s)
 - Ensure that they certify annually

Certification of Records Officer

63G-2-108. Certification of records officer.

- Certify annually
- Obtain certification from state archives in accordance with Section 63A-12-110

The screenshot shows the 'Records Officer Certification' dashboard for Nova Dubovik. The user is logged in as Nova Dubovik. The dashboard displays the current status as 'CERTIFIED' with an annual renewal due on June 29, 2017. Below this, there is a section for 'Applicable Tests' with two tests listed: 'Records Access and GRAMA Essentials Test' and 'Records Management Essentials Test'. The first test has a status of 'See test results below' and buttons for 'View Test Material' and 'Start This Test'. The second test has a status of 'Never taken' and similar buttons. At the bottom, there is a 'Your Test History' section with a table showing two test attempts.

Test Name	Started	Completed	Score	Pass/Fail	Options
Records Access and GRAMA Essentials Test	09/15/2016	09/15/2016	24.44%	Fail	View Missed Ques
Records Access and GRAMA Essentials Test	06/29/2016	06/29/2016	97.78%	Pass	Reprint My Certificate

QUESTIONS?

SECTION TWO

Access to Records

- 63G-2-201 Right to inspect records and receive copies of records
- 63G-2-202 Access to private, controlled, and protected documents
- 63G-2-203 Fees
- 63G-2-204 Requests-Time limit for response and extraordinary circumstances
- 63G-2-205 Denials
- 63G-2-206 Sharing records
- 63G-2-207 Subpoenas
- 63G-2-208 Public repository of legislative email



Public Records

63G-2-201(1)

Every person has the right

- To inspect a public record free of charge, and
- Right to a copy of a public record during normal working hours
 - Subject to Sections -203 and -204
- A record is public unless otherwise expressly provided by statute

Access to Records

- 63G-2-201(8)(a) and (b)
- In response to a request, a governmental entity is not required to:
 - Create a record
 - Compile, format, manipulate, package, summarize, or tailor information
 - Provide a record in a particular format not currently maintained
 - Fulfill request if unreasonably duplicates prior request from same person
- Governmental entity May if it does not unreasonably interfere with duties and responsibilities, and
- Requester agrees to pay appropriate fees

Access to Records

- 63G-2-201(11) and (12)
- Governmental entity **May** not deny or hinder right to inspect and receive copy of record due to
 - Physical form
 - Electronic or otherwise
 - Provide access to electronic copy if:
 - Stated preference
 - Maintained in electronic format
 - Does not disclose exempt records
 - May be redacted



Disclosure of Private Records

- 63G-2-202(1)
- Private records should be made available to:
 - Subject of the record
 - Parents, guardians, and agents
 - Persons with notarized release or power of attorney
- Government records officers should verify the identity of individuals before releasing private records.



Disclosure of Controlled Records

- 63G-2-202(2)
- Physician, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:
 - Release from subject of the records; and
 - Signed acknowledgment of the terms of disclosure of the information; and
 - Court order or legislative subpoena
- A person who receives a controlled record from a governmental entity may not disclose the record to any person including the subject of the record



Disclosure of Protected Records

- 63G-2-202(4)
- Protected records can be provided to the persons who provided the records.
- Individuals with power of attorneys
- Individuals with notarized releases
- Restrictions notwithstanding, private, controlled, or protected records can be shared with other governmental entities or be provided in response to a court order.



Fees

- 63G-2-203(1) and (2) Fees
- Governmental entity May charge reasonable fee to cover costs:
 - Compile in a form other than normally maintained
 - Cost of compiling, formatting, manipulating, packaging, summarizing, or tailoring
 - Cost of staff for search, retrieval



Fees

- 63G-2-203(1) and (2) Fees
- Governmental entity May charge reasonable fee to cover costs:
 - Fees for a record result of computer output
- DO NOT charge for the first 15 min. of staff time
- Hourly charge, based on salary of lowest paid trained employee



Fees

63G-2-203(3)(a)

Fees shall be established by:

- Political subdivisions through ordinances or written formal policy adopted by the governing body



Fees

- 63G-2-203(5)
- GRAMA encourages fee waivers:
 - -Benefits the public
 - -Requester is the subject of the records
 - -Individual's rights, impecunious, indigent.
- Require prepayment of past fees.
- Cost of a request is expected to exceed \$50.

A close-up, high-contrast photograph of a US quarter coin, showing the words "LIBERTY" and "QUARTER" and the number "25". The coin is positioned on the left side of the slide, partially overlapping a diagonal grey line.

Fees

63G-2-203(6)(a)

A person who believes that there has been an unreasonable denial of a fee waiver may appeal the denial to the chief administrative officer.

Requests

- 63G-2-204(1)
- IS THIS A PROPER REQUEST?
 - ✓ Name
 - ✓ Mailing Address
 - ✓ Telephone number (if available)
- ? Description of record requested
- (specificity)

Police Department reports are subject to the provisions of the Government Records Access Management Act (GRAMA). This Act serves first to protect the identity and information of individuals dealing with the Police Department and to provide a structured method for the community to receive information. Certain information is not available such as dates of birth, social security numbers and the like. Other information like home addresses, phone numbers, and work addresses may be redacted from the report.

Name (Nombre) Mr. B.
Address (Domicilio) 300 S. 400 E Apt
City (Ciudad) City North State (Estado) UT Zip 85208
E-Mail Address

Type of Report
☐ Crime Report
☐ Accident Report
☐ Arrest Report
☐ Citation
☐ Photographs
☐ Witness Statements
☒ Other I don't know

Your Role in this Report
☐ I was a witness to the event.
☐ I am the victim.
☐ I was arrested for this event.
☐ I was a passenger in one of the vehicles.
☐ I received a traffic citation.
☒ Other I don't know

Case Number: Unknown Date of Occurrence: ALL

I certify that the statements made in this request are truthful and I am not in any way trying to fraudulently obtain this report or information. Doing so through fraudulent means is punishable in accordance with Utah Code Annotated.

Signature (Firma) Mr. B. Date (Fecha) Sept 10, 2013

Identification: ☐ UT DL ☐ UT ID ☐ Police Department Only

Date Fulfilled: _____ Clerk: _____

Reason for Denial: _____

Requests

- 63G-2-204(1)
- IS THIS A PROPER REQUEST?
- ✓ Name
- ✓ Mailing Address
- ✓ Telephone number (if available)
- ✓ Description of record requested (specificity)
- ✓ If a request is unclear facilitate the process and contact the requester for clarification.

Records Officer, American Fork Police Department,

11-7-16

Re: GRAMA Request

Pursuant to UCA § 63G-2-204 (GRAMA) I'd like to request copies of the following public records:

1. All local and long distance phone bills for the A.F. Police Dept. for the months of June 2016 to present.
2. All cell phone bills for Dept issued/paid cell phones for the months of June 2016 to present.

I'd like to request that all the above records be copied to a CD/DVD and provided in an electronic format. This preference for electronic copies of records is based on UCA § 63G-2-201(12)(a).

Respectfully,

Patrick Sullivan #210357

Utah State Prison

PO Box 250

Draper, UT 84020

Requests

- 63G-2-204(2)(a).
- Requester submits request to:
 - Governmental entity who
 - Prepares
 - Owns
 - or
 - Retains

Records Officer, American Fork Police Department,

11-7-16

Re: GRAMA Request

Pursuant to UCA § 63G-2-204 (GRAMA) I'd like to request copies of the following police records:

1. All local and long distance phone bills for the A.F. Police Dept. for the months of June 2016 to present.
2. All cell phone bills for Dept issued/paid cell phones for the months of June 2016 to present.

I'd like to request that all the above records be copied to a CD/DVD and provided in an electronic format. This preference for electronic copies of records is based on UCA § 63G-2-201(12)(a).

Respectfully,

Patrick Sullivan #210357

Utah State Prison

PO Box 250

Draper, UT 84020

Definition of a GRAMA request

- A written request containing the person's:
 - Name
 - Address
 - Daytime phone number,
- A description that identifies the requested record with reasonable specificity.

Requests

- 63G-2-204(3)(b).
- Records officer has 10 Business Days to respond
 - Approve and provide records
 - Deny access to records in whole or part
 - Notify requester governmental entity does not maintain record
 - Notify requester there is a claim of extraordinary circumstance

Processing a GRAMA Request

First Step:

- Is it a request for a record defined by GRAMA?
- Does your agency have the requested information?
- If your agency does not maintain the record notify the requester, and;
 - Provide the requester with appropriate agency if known.
- If your agency does maintain the record then...



Processing a GRAMA Request

- Should access be granted
- If restricted classification and requester not entitled
 - Provide written notice of denial
- If content is combination public and restricted
 - Redact if remaining is intelligible



Processing a GRAMA Request

- Other Helpful Tips:
 - Note the date of receipt on request
 - Compute an annotate when 10 business days will expire
 - Maintain a copy of the request per state schedule 1-64 (2yrs)
 - Maintain a copy of the records until appeals process is exhausted



Extraordinary Circumstances

- A voluminous quantity of records or the requester sends numerous requests within 5 working days.
- If the request requires government to review a large number of records.
- If government is processing a large number of records requests.
- If the government needs to consult legal counsel before making a classification decision.
- Time limits can be extended to 15 business days or as long as reasonably required to complete the request.

Requests

- 63G-2-204(8).
- What Constitutes Access Denial?
 - Notice of denial provided.
 - Records officer fails to issue a denial or response within specified time period.
 - Considered equivalent of a determination denying access to records.
- Requester may appeal to chief administrative officer

Denials

- 63G-2-205
- A description of the record(s) access to be denied
- Legal citation of GRAMA or other statute
- Statement requester has right to appeal decision
- Time limits for filing an appeal [which is 30 days], and
- Name and business address for the chief administrative officer.

Denials

- 63G-2-205
- **MAY NOT** destroy or give up custody of any record to which access was denied.
- Period for an appeal must have expired or the end of the appeals process, including judicial appeal.

Denials

- Does this denial meet the law's requirements?

Subsection 63G-2-205

Description of record denied (Sort of)

Legal citation for the denial (No)

Right to appeal (No)

Nov. 8, 2015

321 N. Mall Dr.
St. George, UT

RE: GRAMA REQUEST:

To whom it may concern:

Pertaining to the GRAMA request on Mr. B. I am unable to released the initial police reports, chemical testing, transportation, and audio/video because this case has not went to court.

The secretary of the prosecuting attorney is sending all the discovery she has available to your office.

Thank you,
Records Dept.

Denials

- Does this denial meet the law's requirements?

Section 63G-2-205

- ✓ Description of record denied
- ✓ Legal citation for the denial
- ✓ Right to appeal

November 10, 2016

You submitted a request for records to our Department dated November 7, 2016 which asked for the following records:

1. "All local and long distance phone bills for the A.F. Police Dept for the months of June 2016 to present.
2. "All Cell phone bills for Dept issued cell phones for the months of June 2016 to present."

This Department denies your request. The requested records are classified as both Private and Protected Records pursuant to the following:

1. UCA Section 63G-2-305(10)
2. UCA Section 63G-2-305(11)
3. UCA Section 63G-2-305(51)
4. UCA Section 63G-2-302(2)(d)
5. UCA Section 63G-2-301(2)(b)(i)
6. UCA Section 63G-2-301(2)(b)(ii)

Thank You,

Notice:

You have a right to appeal any denial of request for records to this Department's Chief of Police. Such an appeal must be made within 30 days after the denial is sent, and must be directed to Chief Darren Falslev at the following address, 75 E 80 N American Fork, UT 84003.

Sharing Records

- 63G-2-206
- If a governmental entity is prohibited from providing a record under Subsection -206(2)(b) it shall:
- Deny the records request; inform the person making the request that records requests must be submitted to the governmental entity that prepares, owns, retains the record.
 - A governmental entity may make rules in accordance with Title 63G, Chpt. 3, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.
 - For Local Government create a policy or ordinance.



- **MOST IMPORTANT....**

- Before disclosing a record or record series
 - Provide classification and restrictions on access
 - If the recipient is not a government entity-obtain recipients written agreement

Record Sharing Agreement for Governmental Entities

Note: Utah Code Section [63G-2-206\(1\)\(2\)\(3\)](#) states that a governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state. Further details are defined.

Originating governmental entity information

Agency name: _____

Address: _____

City/State/ZIP: _____

Records officer or contact person: _____

Telephone number: _____

Email address: _____

Recipient governmental entity information

Agency name: _____

Address: _____

City/State/ZIP: _____

Records officer or contact person: _____

Telephone number: _____

Email address: _____

Description of records being shared

Title/ series number/ description: _____

Inclusive dates: _____

Format: _____

Reason for sharing records: _____

Records classification designations(s): _____

Legal citation supporting classification designation(s): _____

Subpoenas

- 63G-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 63G-2-204.
 - DO NOT interchange GRAMA requests and Subpoenas/Discovery
 - Separate processes under the law
 - Judicial Process versus Administrative Process
 - See State Records Committee decision *Phillips v. West Jordan PD*, Case No. 14-04

Subpoenas/Discover vs GRAMA

- Discovery:

- -A person may receive nonpublic records that are relevant to a case that is pending in court.
- -It is a judicial matter conducted completely by the courts
- -The appeals process for Discovery is through the judge.

- GRAMA:

- -A requester is generally trying to access public records.
- -It is an administrative matter governed by state statute.
- -GRAMA has an appeals procedure for records access and fee denial.

ACTIVITY QUESTIONS

Review

1. Records officers shall on annual basis, successfully complete online training and obtain certification from state archives in accordance with Section 63A-12-110? True or False

Answer: True (U.C. 63G-2-108)

2. A governmental entity is encouraged to waive a fee only in certain instances. True or False

Answer: True (U.C. 63G-2-203)

3. How many business days does the records officer have to respond to a GRAMA request?

Answer: 10 business days (U.C. 63G-2-204)

Review

4. What are four components of a GRAMA request?

- A) name, mailing address, daytime telephone number (if available), and description of record requested.
- B) name, email address, daytime telephone number (if available) and description of record requested.

Review

4. What are four components of a GRAMA request?

A) name, mailing address, daytime telephone number (if available), and description of record requested. (U.C. 63G-2-204)

Review

5. If the governmental entity denies the request in whole or part, it shall provide a notice of denial to the requester. The notice of denial shall contain what information?

- A) Description of records or portions denied access, citations, statement the requester has the right to appeal, time limits for filing an appeal to whom.
- B) Description of records or portions denied access and citations.

Review

5. If the governmental entity denies the request in whole or part, it shall provide a notice of denial to the requester. The notice of denial shall contain what information?

A) Description of records or portions denied access, citations, statement the requester has the right to appeal, time limits for filing an appeal to whom. (U.C. 63G-2-205)

SECTION THREE



Classification

- 63G-2-301 Public records
- 63G-2-302 Private records
- 63G-2-303 Private information concerning government employees
- 63G-2-304 Controlled records
- 63G-2-305 Protected records
- 63G-2-306 Procedure to determine classification
- 63G-2-307 Duty to evaluate records and make designation and classification
- 63G-2-308 Segregation of records
- 63G-2-309 Confidentiality claims
- 63G-2-310 Records made public after 75 years

Classification

- Public
- Private
- Controlled
- Protected

Public Records

- 63G-2-301(1-3)
- Following records are **public except** to the extent they contain information expressly permitted to be treated confidential.
 - Laws
 - Minutes of open and public meetings
 - Final opinions
 - Summary data
 - Business addresses and phone numbers

Public

- 63G-2-301(2). Public Except.
- (b) the name, gender, gross compensation, job title, job description,, 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;

Public

63G-2-301(2). Public Except.

(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;

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

Public

63G-2-301(2). Public Except.

- (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;
- (k) summary data;

Public

- 63G-2-301(3). Normally Public.

(a) administrative staff manuals, instructions to staff, and statements of policy;

Chronological logs and Initial Contact Reports

63G-2-301(3)

(g) Chronological logs and initial contact reports.

- Normally public (usually public) unless another statute applies

- Before releasing a records officer should do the following:

- Consider whether or not the entire report or any content should be restricted

Public

63G-2-301(3). Normally Public.

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

- (i) a governmental entity;
- (ii) a political subdivision;
- (iii) a federal government...
- (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;

Public

63G-2-301(3). Normally Public.

(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;

Public

63G-2-301(3). Normally Public.

(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**;

Public

63G-2-301(3). Normally Public.

(q) final audit reports;

(r) occupational and professional licenses;

Public

63G-2-301(3) Normally Public.

(s) business licenses; and

(t) a notice of violation, a notice of agency action under Section 63G-4-201, 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.

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





Brain Refresher

Disclosure of Private Records

- 63G-2-202(1)
- Private records should be made available to:
 - Subject of the record
 - Parents, guardians, and agents
 - Persons with notarized release or power of attorney
- Government records officers should verify the identity of individuals before releasing private records.

Private

63G-2-302(1) and (2)

- Two tier
 - Records that are ALWAYS PRIVATE (302)(1)(a-v)
- Records if **PROPERLY CLASSIFIED** by a governmental entity are PRIVATE (302)(2)(a-f)

Private

63G-2-302(1). Always 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;

Private

63G-2-302(1). Always Private.

(n) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

(o) information provided by an offender that is:

(i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap Offender Registry; and

(ii) not required to be made available to the public under Subsection 77-41-110(4);

(v) a criminal background check or credit history report conducted in accordance with Section 63A-3-201.

Private

63G-2-302(2). Properly Classified

- (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 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

*Cross references to 301(3)(o)

Private

- 63G-2-302(2). Properly Classified.

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

Private

63G-2-302(2). Properly Classified.

(g) audio and video recordings created by a body-worn camera, as defined in Section 77-7a-103, that record sound or images inside a home or residence except for recordings that:

- (i) depict an alleged crime;
- (ii) encounter between a law enforcement and a person resulting in death or bodily injury/firing weapon
- (iii) subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;
- (iv) contain an officer involved critical incident as defined in Section 76-2-408(1)(d); or
- (v) requested for reclassification as a public record by a subject or authorized agent featured in the recording.



Brain Refresher

Disclosure of Controlled Records

- 63G-2-202(2)
- Physician, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:
 - Release from subject of the records; and
 - Signed acknowledgment of the terms of disclosure of the information; and
 - Court order or legislative subpoena
- A person who receives a controlled record from a governmental entity may not disclose the record to any person including the subject of the record

Controlled Records

- 63G-2-304
- Controlled records are also restricted.
 - Contain information about individuals that should not be released to the general public.
 - Medical, psychiatric, psychological data


Controlled Records

63G-2-304

The governmental entity reasonably believes that releasing the information:

- Would be detrimental to the subject's mental health or to the safety of any individual; or
- Releasing the information would constitute a violation of normal professional practice and medical ethics





Brain Refresher

Disclosure of Protected Records

- 63G-2-202(4)
- Protected records can be provided to the persons who provided the records.
- Individuals with power of attorneys
- Individuals with notarized releases
- Restrictions notwithstanding, private, controlled, or protected records can be shared with other governmental entities or be provided in response to a court order.

Protected

- 305(1) Trade Secrets, (2) Commercial information (cross reference to Section-309)
- 305 (5) Test questions/answers
- 305(10) (a-e) records maintained for civil, criminal, or administrative enforcement purposes or audit
- 305(11) Jeopardize the life or safety of an individual
- 305(12) Jeopardize the security of gov. property...

Protected

- 305(13) Jeopardize the security or safety of a correctional facility
- 305(14) Disclosure reveal Board of Pardons and Parole recommendations
- 305(17) Attorney client privilege
- 305(18) Record prepared for or by (work products) attorney, consultant...

Protected

- 305(22) drafts
- 305(23) records concerning collective bargaining or imminent or pending litigation
- 305(25) records, other than personnel evaluations, that contain personal recommendations concerning an individual...unwarranted invasion of personal privacy

Protected

- 305(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body...
- 305(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13
 - Section 41-6a-404, Motor Vehicles/Traffic Code, Accident Responsibilities
 - Section 41-6a-202, Motor Vehicles/Traffic Code, Applicability and Obedience to Traffic Laws
 - Section 73-18-13, State boating Act, Operator involved in accident
- 305(46) record provided by pawn shop...

Duty to Evaluate Records and make Designations and Classification

- Governmental Entity Shall (U.C. 63G-2-307):
 - Evaluate all record series it uses/creates
 - Designate record series
 - Report designation to State Archives
 - May classify record, series, or information within a record at any time
 - Not required to classify a record, series, or information until access requested
 - May redesignate or reclassify a record or records series, or information within a record

Segregation or Records

- U.C. 63G-2-308
- Segregation (redaction) of records
- No longer makes sense after redaction then deny it
- "When in doubt redact it out"

Confidentiality Claims

- 63G-2-309. (cross reference to Subsection -305(1) and (2))
- 1(a)(i) Any person who provides to a governmental entity a record that the person **believes should be protected** under Subsection 63G-2-305(1) or (2) or both Subsections 63G-2-305(1) and (2) shall provide with the record:
 - (A) a **written claim** of business confidentiality; and
 - (B) a concise statement of reasons supporting the claim of business confidentiality.

Confidentiality Claims

- *Fife v. Orem City*, Civil No. 140400007
- *The Herald v. Utah State University, Maverik Stadium*,
(See SRC Decision 2015-20)

Sample of a Claim of Business Confidentiality Form

GRAMA Claim of Business Confidentiality

Pursuant to Utah Code Section [63G-2-305](#)(1) and (2), and in accordance with Section [63G-2-309](#),
(company name) asserts a claim of business
confidentiality to protect the following information submitted as part of a Request for Proposals.

- ☐ non-public financial statements
- ☐ specific employee name and contact information
- ☐ specific customer information, client lists, or subscription lists
- ☐ other (specify):

This claim is asserted because this information requires protection as it includes:

☐ trade secrets as defined in Utah Code Section [13-24-2](#) ("Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.)

☐ commercial information or non-individual 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; [and] (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

Following is a concise statement of reasons supporting the claim of business confidentiality:

Signed: _____

On behalf of (company): _____

Date: _____

Records made Public after 75 years

- 63G-2-310.
- Records made public after 75 years...
 - Presumed public after 75 years for adults
 - Presumed public after 100 years for 21 years old or younger



QUESTIONS?

Activities



Public (tier one)-
Must be disclosed...may
Contain confidential information

63G-2-301(1) and (2)

A

- Business address, email, phone number

Public (tier two)-
Normally

63G-2-301(3)

B

- Formal charges against an employee
- Policies and procedures manual

Not subject to GRAMA

63G-2-106

C

- Computer Password

Private (tier one)-
Always

63G-2-302(1)

A

Private (tier two)-
If properly classified

63G-2-302(2)

B

Controlled-

63G-2-304

C

- Persons home address and phone number

- Psychiatric evaluation

- Performance evaluations

- Bids on a contract
- Audio recording of a closed meeting
- Temporary draft
- HIPAA/FERPA

A

Protected-

63G-2-305(1-65)

B

Limited by another rule or statute-

63G-2-201(6)

C

Not a record-

63G-2-103(22)

SECTION FOUR



Appeals

- 63G-2-400.1 Definitions
- 63G-2-401 Appeal to chief administrative officer
- 63G-2-402 Appealing a decision of a chief administrative officer
- 63G-2-403 Appeal to the state records committee

Appeals

- Important provision
- Right of requester or interested party to appeal the decision
- Records officers should familiarize with past Records Committee decisions and orders

Part Four: Appeals

- 63G-2-401
- Chief administrative officer response:
 - 10 business days
 - 5 business days expedited response
 - 12 days if confidentiality claim

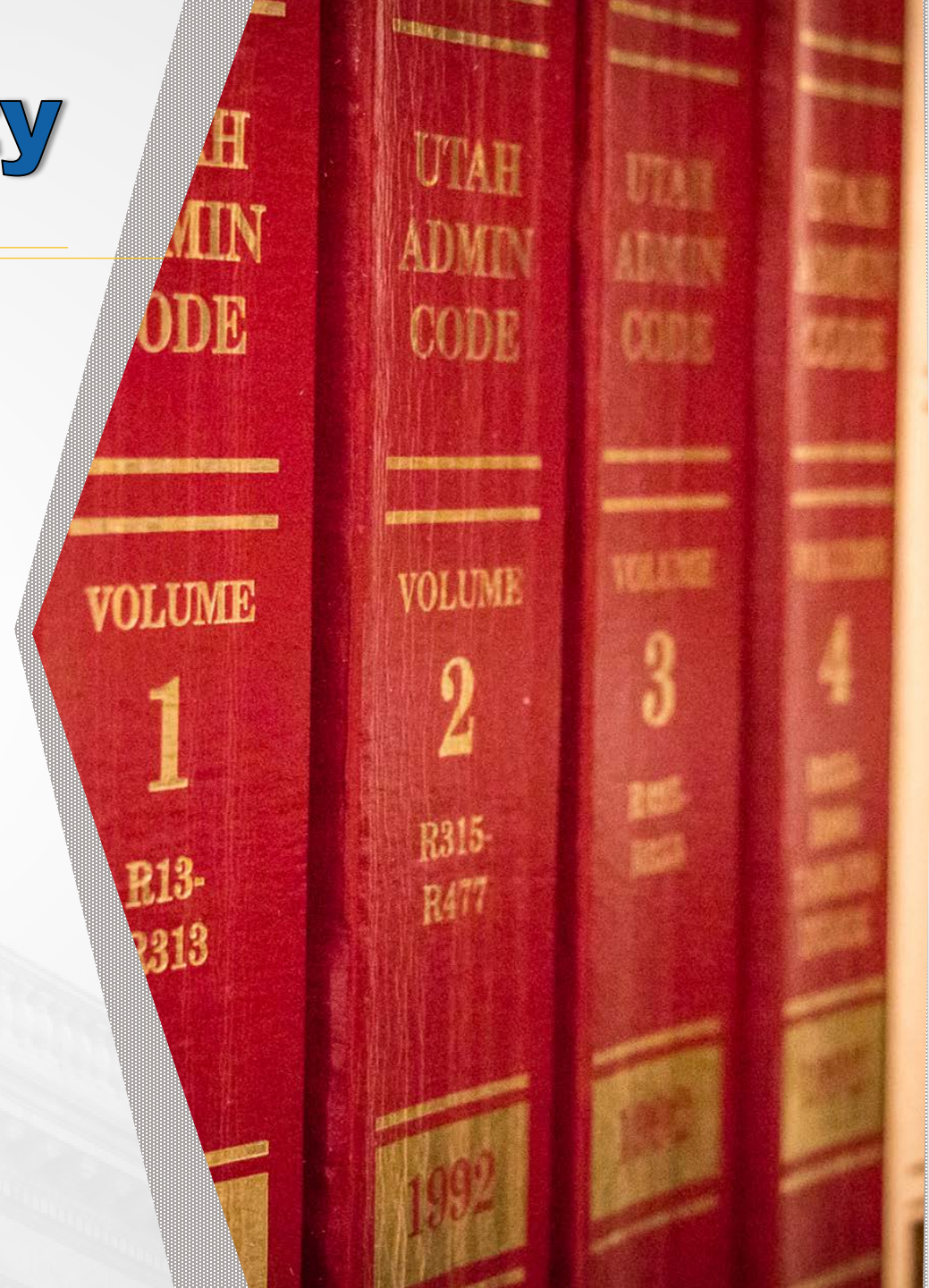
Business Confidentiality Claim

Business confidentiality claim (DIFFERENT)

Chief administrative officer

- Send notice to claimant within 3 business days
- 35+ persons reasonable period of time
- Send notice and schedule of the determination to requester within 3 business days

12 Business days after notice of appeal to make a decision on the appeal



Appeals

- 63G-2-401(5).
- (b)
 - (i) If the chief administrative officer **fails to make a decision** on an appeal of an access denial within the time specified in Subsection (5)(a), the **failure is the equivalent of a decision affirming the access denial**.

Appeals

63G-2-401(5).

(c) The provisions of this section notwithstanding, the parties participating in the proceeding **may, by agreement, extend the time periods specified in this section.**



Appeals

- 63G-2-401(6)
- Chief administrative officer may...
- Exercise discretion to make an otherwise exempt record accessible if:
 - After consideration and weighting of various interests and public policies pertinent to the classification, disclosure, nondisclosure
 - Other laws do not take precedence-FERPA, HIPAA, Federal, court order
 - Interest favoring access outweighs any interest favoring withholding

Appeals

- Second level of appeal:
 - An established a local appeals board the requester must appeal to the board
- Third level of appeal:
 - Appeal to the State Records Committee or District Court.

Appeals to the Records Committee

- 63G-2-403
- Appellant:
 - File a notice of appeal no later than 30 days after the date of issuance of the decision being appealed.
 - On the day notice of appeal is filed Appellant shall serve a copy to the governmental entity.
- Executive secretary sends out hearing notices within 7 business days of receiving the notice of appeal

Appeals to the Records Committee

- 63G-2-403(5)
- Governmental entity
 - 5 business days prior to the hearing a statement of facts, reasons, and legal authority in support of the governmental entity's decision.

Day of the hearing

- 63G-2-403(11), (12), and (15)
- 7 Business days after the hearing issue a signed order
- Parties have 30 days after the decision date to comply or appeal the decision

State Records Committee

- 63G-2-501.
- State Records Committee
- 7 Members
 - Governor's designee
 - Utah League of Cities and Towns nominee
 - 2 Citizen representatives
 - News media
 - State history designee
 - Private sector records manager



2017 GRAMA Updates

- HB381 Law Enforcement Body Camera Footage
- U.C. 77-71-107
- HB435 Health Care Patient Privacy Amend
- U.C. 63G-2-305(66)

2017 GRAMA Updates

- SB0242 GRAMA
- U.C. 63G-2-201(9)
- A governmental entity is not required to respond to or provide a records submitted by an individual who is confined in a jail or correctional facility
- Respond to first 5 records requests submitted in calendar year
- Attorney submit on behalf of the confined individual
- Individual right to appeal

2017 GRAMA Updates

- SB0242 GRAMA
- Prohibits judges remanding cases to the State Records Committee
- 10 business days for a chief administrative officers response time
- 5 business days for a chief administrative officer's expedited response time

2017 GRAMA Updates

- SB0242 GRAMA
- U.C. 63G-2-701
- Local appeals board (3 members)
 - One member employee of the political subdivision
- Two members of the public
 - Not employed by or officials off a governmental entity
 - One having professional experience requesting or managing records.

Summary

- Legislative intent
- Who can access public, private, controlled, and protected records
- How to process a GRAMA request
- Classify and segregate information
- Appeals process
- 2017 GRAMA Updates

QUESTIONS?

Thank you!

Contact Information

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Information

- State Archives: <http://www.archives.state.ut.us/>
- Records Management Training:
<http://www.archives.state.ut.us/recordsmanagement/training.html>
-
- Utah Public Notice Website: <http://www.utah.gov/pmn/index.html>
- Open Records Portal: <http://openrecords.utah.gov/>
- State Records Committee: <http://www.archives.state.ut.us/src/index.html>
- Government Records Ombudsman:
<http://www.archives.state.ut.us/recordsmanagement/ombudsman.html>