

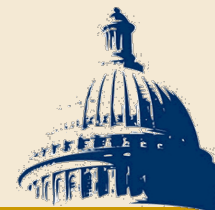


Providing Access to Government Records, Part I

Utah State Archives -- 2011



The Government Records Access and Management Act (GRAMA) is one of Utah's records laws.



Archives & Records Service
a division of the Department of Administrative Services



Government Records Access and Management Act (GRAMA)

- What is the intent of the law?
- What does the law include?
- What is the extent of the law?
- Are there exceptions to its applicability?



Intent of GRAMA UCA 63G-2-102(1)(2)

■ The Government Records Access and Management Act

■ Purpose:

- ❑ To balance the public's right to access information about government business and the right of privacy in relation to personal data.
- ❑ To recognize the need of government to restrict records for the public good.





Intent of GRAMA UCA 63G-2-102 (3)

- 1) promote access to unrestricted records
- 2) specify when restriction outweighs access
- 3) prevent abuse of confidentiality
- 4) provide guidelines for disclosure and restriction
- 5) favor access when countervailing interests are equal
- 6) establish records management practices



Discussion Point

Facing Up: Privacy in the Era of Facebook

- Facebook's Mark Zuckerberg says privacy is no longer a 'social norm'
- How is social media changing our approach to the privacy rights of individuals?
- How can governmental entities ensure privacy in the face of born digital records, online presence, and social media demands?



GRAMA includes nine parts:

- I. General Provisions
- II. Access to Records
- III. Classification
- IV. Appeals
- V. State Records Committee
- VI. Accuracy of Records
- VII. Applicability
- VIII. Remedies
- IX. Public Associations



Public Records Management Act UCA 63A-12

- Duties of the Division of Archives and Records Service
- Duties of the State Archivist
- Duties of governmental entities
- Records declared property of the state



Applicability of GRAMA UCA 63G-2-103 (11)

- GRAMA applies to records created by Utah **governmental entities.**
 - state executive department offices and agencies, the Legislature and its offices and committees, the courts, state funded institutions of education, and political subdivisions.
 - offices, boards, committees, departments, that are established or funded by government to carry out public business.



Applicability of GRAMA UCA 63G-2-103 (22)

GRAMA applies to government records.

Record means “a book, letter, document, paper, map, plan, photograph, film, card, etc.

- information in any format, that was created or is maintained by government and which is reproducible.



Applicability of GRAMA UCA 63G-2-103 (22)

Record does not mean non government records

- examples: personal notes, temporary drafts created for personal use, personal calendars, junk mail, library or copyrighted materials, computer programs.



Applicability of GRAMA UCA 63G-2-105

GRAMA honors the validity of **confidentiality agreements** which are agreements executed prior to April 1, 1992, when the law took effect.

- ❑ unless all parties agree in writing to be governed by GRAMA.



Applicability of GRAMA UCA 63G-2-106

- GRAMA excludes all records relating to **security measures**
 - ❑ security plans
 - ❑ security codes, combinations, passwords
 - ❑ passes and keys
 - ❑ security procedures
 - ❑ building and public works designs that relate to ongoing security measures



GRAMA- Exceptions to applicability

UCA 63G-2-701

- Political subdivisions can adopt ordinances or policies relating to information practices.
 - Records retention, appeals process, etc.
- Every policy, ordinance, or amendment must be filed with the State Archives within 30 days of its effective date.
- Classification standards of records and records access requirements cannot be altered



GRAMA- Exceptions to applicability

UCA 63G-2-702

- The Judiciary and the Legislature and its staff offices are exempt from some of the requirements of GRAMA.
 - ❑ not subject to appeal through the State Records Committee
 - ❑ establish their own records retention schedules
 - ❑ not subject to GRAMA fee schedules



Public records are available to anyone





Public records

- What is a public record?
- Which records are specifically identified as public?
- Who can access public records?



Public records UCA 63G-2-103 (21)

- **Public Record** means a record that is not private, controlled, protected, or otherwise exempt from disclosure.
- GRAMA states that “A record is public unless otherwise expressly provided by statute.” UCA 63G-2-201(2)



Public records

For a list of records that must always be classified as public see

[UCA 63G-2-301\(2\)](#)

■ Examples

- ❑ a) laws UCA 63G-2-301 (2)(a)
- ❑ e) transcripts or minutes of an open meeting
UCA 63G-2-301 (2)(e)
- ❑ l) voter registration records UCA 63G-2-301 (2)(l)



Public records

For a list of records that are classified as *normally* public, see

[UCA 63G-2-301\(3\)](#)

- Examples of *normally* public records.
 - ❑ b) contracts UCA 63G-2-301 (3)(b)(d)
 - ❑ j) drafts UCA 63G-2-301 (3)(j)(k)
 - ❑ q) final audit reports UCA 63G-2-301 (3)(q)

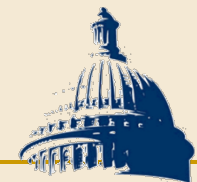


Access to public records UCA 63G-2-201(1)

- **Every person** has the right to inspect a public record during normal business hours and the right to make a copy.



Access to restricted records is limited





Restricted records

- What is a private or controlled record?
- Which records are protected?
- Who can access restricted records?
- What other statutes govern records access?



Restricted records UCA 63G-2-201(3)

- Records that are not public include:
 - ❑ 1) **private** records
 - ❑ 2) **controlled** records
 - ❑ 3) **protected** records
 - ❑ 4) any record to which access is **limited** pursuant to court rule, another state statute, federal statute, or federal regulation.



Access to private records UCA 63G-2-202

- **Private records** contain data about individuals.
- Access is limited to the individuals who the information is about and their representatives.



Private records UCA 63G-2-302(1)

For a list of private records, see [UCA 63G-2-302](#)

■ Private records, tier 1

- ❑ b) medical records,
- ❑ c) records of publicly funded libraries that will identify a patron,
- ❑ f) employment records that would disclose an individual's home address, home phone number, Social Security number, insurance coverage, marital status, or payroll deductions, and
- ❑ j) information about individuals which is voluntarily provided as part of that person's online interaction with government.





Private records UCA 63G-2-302(2)

■ **Private records**, tier 2

- ❑ a) records that provide personal status information about employees, such as race, religion, disabilities, and performance evaluations,
- ❑ b) records describing a person's personal finances,
- ❑ d) other records containing data on individuals when disclosure would constitute a clearly unwarranted invasion of personal privacy.



Private information concerning certain government employees UCA 63G-2-303

- “At-risk employees” can ask for specific personal information to be restricted.
 - “at-risk employees” are law enforcement officials, judges, prosecutors. UCA 63G-2-303(1)
 - “at-risk employee” to file request with each agency that holds his home address, home phone number, insurance coverage, or similar identifying information. UCA 63G-2-303(2)
 - recipient entity will comply by blocking public access to the designated information. UCA 63G-2-303(3)



Controlled records UCA 63G-2-304

- Records that contain medical, psychiatric, or psychological data about an individual are **controlled** when
 - releasing the information to the subject of the record would be detrimental to his or her mental health or to the safety of any individual, or
 - releasing the information would constitute a violation of normal professional practice.



Access to controlled records UCA 63G-2-202(2)

- Controlled records can be released to:
 - a physician, psychologist, certified social worker, insurance provider, or government public health agency who has a notarized release from the subject and whose signed acknowledgment prohibits him or her from **further releasing the record**.
 - anyone authorized by court order or legislative subpoena.



Access to protected records UCA 63G-2-202(4)

- **Protected records** usually do not contain data about individuals, but access is restricted because it is in the public interest.
- Access is limited to the individuals who provided the record.



Protected records UCA 63G-2-305

For a list of protected records, see [UCA 63G-2-305](#)

- ❑ 2) commercial or non-individual financial information if disclosure could result in injury, unfair competitive advantage, or impair obtaining information in the future.
- ❑ 3) commercial or financial information to the extent that disclosure would lead to financial speculations that would be detrimental to government or the economy.
- ❑ 4) records the disclosure of which could cause commercial injury or a competitive advantage to a competitor of a commercial project entity.



Protected records UCA 63G-2-305

- ❑ 5) test questions and answers to be used in license, certification, registration, employment, or academic exams.
- ❑ 6) records the disclosure of which would give an unfair advantage to someone proposing to enter into a contract or agreement, except bids and proposals cannot be restricted once the bid has been awarded.
- ❑ 7) records that identify real property or the value of real property under consideration for public acquisition.
- ❑ 9) records created...for audit purposes if release could interfere with the audit.



Protected records UCA 63G-2-305

- ❑ 14) records and audit work papers that identify audit procedures and methods used by the Tax Commission if disclosure would interfere with audits or collections,
- ❑ 15) records relating to an audit until the audit is complete,
- ❑ 16) records prepared in anticipation of litigation,
- ❑ 17) attorney's work product,
- ❑ 18) communications with an attorney,
- ❑ 32) transcripts and minutes of a closed public meeting,
- ❑ 51) an individual's home address and home phone number if they were required to provide it.



Access limited by other statutes UCA 63G-2-201(3)(b)

- The Government Records Access and Management Act (GRAMA) states that records to which **access is restricted by a court rule or another state or federal statute** are not public.
 - ❑ HIPAA (Health Insurance Portability and Accountability Act)
 - ❑ FERPA (Family Education Rights and Privacy Act)



Classification Activity

Public (tier one) — Must be disclosed ...may contain confidential information 63G-2-301(2)	Private (tier one) — Always 63G-2-302(1)	Protected — 63G-2-305(1-60)
Public (tier two) — Normally 63G-2-301(3)	Private (tier two) — If properly classified 63G-2-302(2)	Limited by another rule or statute — 63G-2-201-(6)
Not subject to GRAMA 63G-2-106	Controlled — 63G-2-304	Not a record — 63G-2-103(22)





Classification considerations

- Who is responsible to classify records?
- Can information be segregated?
- What is a subpoena?
- Can restricted records be shared?



Classification responsibility UCA 63G-2-307

- may classify a record series at any time, but not required to classify a record until access is requested.
- may re-designate a classification for a record series or re-classify information within a record at any time.



Segregation of records UCA 63G-2-308

- If a governmental entity receives a request for records that contain information the requester is entitled to and information he or she is not entitled to, then allow access to the information the requester is entitled to and deny access to information he or she is not entitled to.



Classification is temporary UCA 63G-2-310

- Unless a reason for restricted access still exists, all records become **public after 75 years.**



Subpoena is not a GRAMA request

UCA 63G-2-207

- **A subpoena** is court-ordered request for records.
- It must be signed by a judge.
- A subpoena is ***not* a GRAMA request**.





Records can be shared UCA 63G-2-206(1) and (4)

- Restricted records can be shared with:
 - other government entities
- Before sharing a record notify the recipient of the classification.



Records can be shared

UCA 63G-2-206(1)

- Restricted records can be shared when the recipient:
 - is a repository or archives.
 - records are needed for such things as enforcement or investigation.
 - is entitled by law to have the record.



Providing Access to Government Records, Part II

Utah State Archives -- 2011



The Government Records Access and Management Act (GRAMA) provides records requests





GRAMA Requests

- What is a GRAMA request?
- What constitutes a response?
- How do extraordinary circumstances affect responses?
- What are the requirements for providing access to records?
- What fees can be charged?
- What is the process for denying access?



GRAMA Requests

“...a person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record.”

-UCA 63G-2-204 (2)(a)



What is a GRAMA request? UCA 63G-2-204(1)

- Requesters must provide a written request to access government records. The request must include:
 - the person's name, address, and daytime phone number.
 - a description of the requested record that identifies the record with reasonable specificity.

A sample form can be found on the Archives website:

<http://archives.utah.gov/recordsmanagement/forms/forms.html>



GRAMA request response UCA 63G-2-204(3)

- Normal response:
 - as soon as reasonably possible, but no later than 10 business days after receiving a written request.

- Expedited response:
 - Must demonstrate that the records requested benefit the public interest.
 - information requested for a story or report in a publication is presumed to be acting in the public interest. (UCA 63G-2-204 (4))
 - notify within five business days after receiving the request.



What constitutes a response? UCA 63G-2-204(3)

Four Responses:

- The agency can **provide a referral** if it does not maintain the requested record.
- The agency can approve the request and **provide the record**.
- The agency can notify the requester that, because of **extraordinary circumstances**, more time is needed to process the request.
- The agency can **deny the request** in whole or in part.



Extraordinary Circumstances UCA 63G-2-204(5)

- The request is for a voluminous quantity records.
- The governmental entity is processing a large number of records requests.
- The request requires examination of a large number of records to locate the requested information.



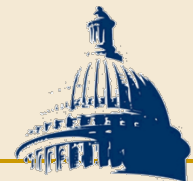
Extraordinary Circumstances UCA 63G-2-204(5)

- If another governmental entity is using the record.
- If another governmental entity is using the record as part of an audit.



Extraordinary Circumstances UCA 63G-2-204(5)

- The decision about whether to release the record requires the involvement of legal counsel to make a classification determination.
- Providing the requested records requires extensive editing or involves segregating information.



Extraordinary Circumstances UCA 63G-2-204(5)

- If an office is sharing and retaining a record that originated in another office, there are two options:
 - forward the request to the originating office
 - respond to the request



Providing access UCA 63G-2-201(8)

In response to a request, a governmental entity is not required to:

- create a record;
- compile, format, manipulate, package, summarize, or tailor information;
- provide the record in a different format;
- fill a request if it unreasonably duplicates prior requests from that person;
- fill a request if the record requested is publicly available, such as available online.



Providing access UCA 63G-2-201(11) and (12)

- Records cannot be denied based on their physical form, i.e., electronic format.
- Government must comply with requests for electronic format
 - if the requester states that as a preference,
 - if the record is being maintained in electronic format and can be provided without reformatting,
 - if information that is exempt from disclosure can be segregated.



Providing access UCA 63G-2-202(6)(9); UCA 63G-2-201(5)

Discussion Point:

- Before providing access to any restricted record proof of identity is required.
 - Undocumented Citizens
 - Widows
 - Name other examples





Fees

UCA 63G-2-203(1)(2)(3)

- A fee may be charged to cover the actual cost of providing the record.
- Fees should be calculated based on the salary of the lowest paid employee with the necessary skill and training to complete the request.
- Fees may be requested up front.





Fee Waivers

UCA 63G-2-203(4)

- A fee may be waived if the request benefits the public rather than a specific individual.
- fees can be waived for:
 - impecunious individuals,
 - or for records which directly affect the requester's legal rights.



Denying a GRAMA Request UCA 63G-2-205

- A governmental entity must provide a written notice of denial.
- The notice of denial must contain the following information:
 - a description of the records to which access is being denied.
 - the legal citation to the provisions of GRAMA or other statute which is the basis for denying access to the requested records.
 - a statement that the requester has the right to appeal this decision to the chief administrative officer.
 - a statement of the time limits for filing an appeal (30 days)
 - the name and business address for the chief administrative officer.





The appeals process

- What can be appealed?
- What is the appeals process?
- What is the State Records Committee?
- How can the number of appeals be reduced?





Requesting an Appeal

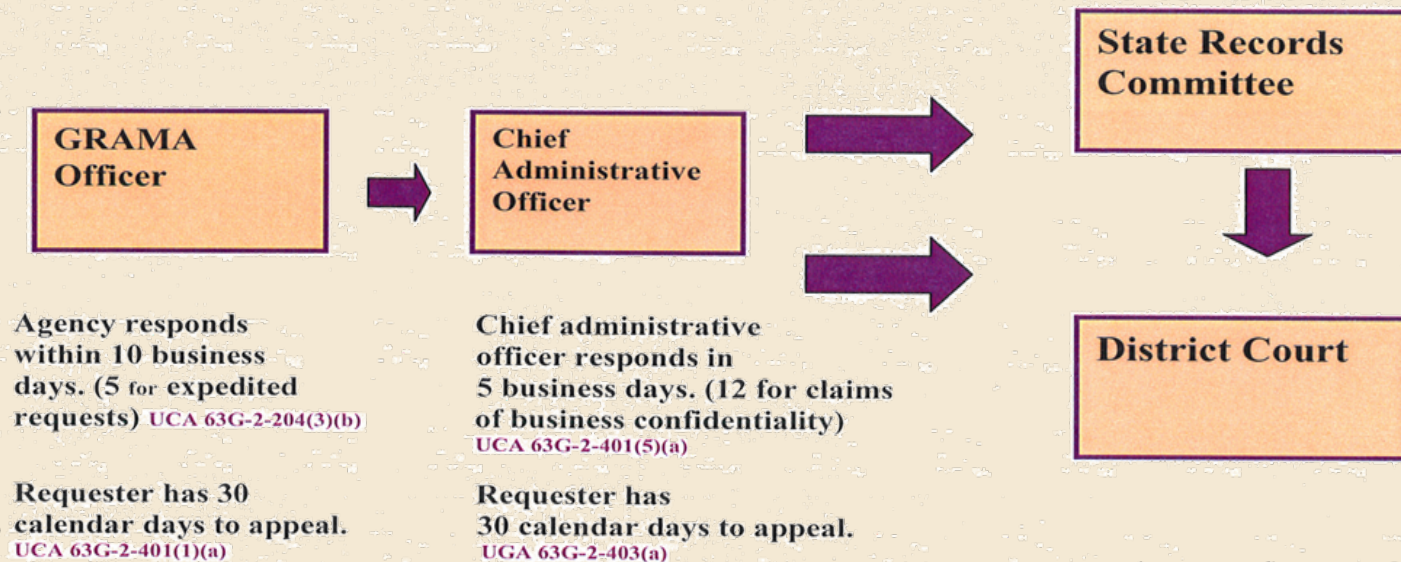
UCA 63G-2-401; 203(6)

- Reasons to request an appeal:
 - the requester does not agree with the agency's decision to restrict a record.
 - a requester believes that his request for a fee waiver was unreasonably denied.



Requesting an Appeal

RECORDS REQUEST TIMELINE



State Records Committee



Seven Members:

- ❑ State auditor's designee -- Betsy Ross
- ❑ State History's designee -- Doug Misner
- ❑ Governor's designee -- Patricia Smith-Mansfield
- ❑ Citizen member -- Scott Daniels
- ❑ Local government -- Ernest Rowley
- ❑ Private records manager -- Scott Whittaker
- ❑ Media -- Lex Hemphill



State Records Committee UCA 63G-2-502

- The SRC **hears appeals** for records access denials.
- All SRC decisions and orders are posted on the Archives website:

<http://archives.utah.gov/src/srcappeals-1992-1994.html>





Reducing the number of appeals

- Ask for a reasonably specific request.
- Guide requesters to records with information they seek.
- Take the request seriously and be helpful.



Reducing the number of appeals

- Clearly state the reason for denial using a legal citation.
- Follow good records management practices and understand your records.
- Provide access when all competing interests weigh equally in the balance.





Thank you! Any questions??



Archives & Records Service
a division of the Department of Administrative Services

