

Government Records Access and Management Act (GRAMA)

All governmental entities must comply with the Governments Records Access and Management Act.¹ This is sometimes referred to as GRAMA. The purpose of the act is to standardize both records access and management. The intent of the act is to make it possible for all public records of government to be available to the public, while protecting the privacy rights of individuals.

Most records of a governmental entity must be public and available at reasonable times and places for inspection and copying. There are possible criminal sanctions for an individual who wrongly refuses access to a record and for an individual who wrongly discloses a properly classified record.²

Every governmental entity must comply with the act. Each must appoint one or more “records officers” who are the individuals appointed by the chief administrative officer of the governmental entity to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

The words *designation* and *classification* refer to the act of placing individual records or records series in one of four classifications: public, private, controlled, or protected. Private, controlled, and protected are terms of art that refer to specific classification possibilities.³ Most records must be public. Some records must be classified as private.⁴ These include records about a person’s welfare benefits; medical history and conditions; library records; current and former employee’s home addresses, social security numbers, and marital status. This list is not a complete listing of what must be private but only an example. Before any record is disclosed the records officer should be consulted to insure that privacy rights are maintained. Examples of controlled records include reports from medical doctors about an individual. An example of a protected record is a trade secret or criminal investigation information. A records officer in any governmental entity should carefully review the definitions of each type of record and make a trained and reason determination of in what category any record must be placed.

Every person has a right to inspect a public record free of charge during normal busy hours of the governmental entity.⁵ You cannot charge someone to find or look up the record for them. If it is a public document, the public has the right to see it. The public also has a right to have a copy of a public record. You can charge a person the

¹ Utah Code 63G-2-101 et seq.

² Utah Code 63G-2-801.

³ What must records are classified is defined in Utah Code sections 63G-2-302, 303, 304

⁴ Utah Code 63G-2-302.

⁵ Utah Code 63G-2-201.

reasonable fee to cover the actual cost of providing a record to someone.⁶ The fee should not be a profit center for the governmental entity. It must be formally approved by the governmental entity's governing body by ordinance or resolution. The fee should not be used as a method of discouraging public access to records.

A person making a request for a record must furnish the governmental entity with a written request containing his name, mailing address, daytime telephone number, if available, and a description of the records requested that identifies the record with reasonable specificity. As soon as reasonably possible, but no later than ten business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person, the governmental entity shall respond to the request by the following:

- (i) Approving the request and providing the record.
- (ii) Denying the request.
- (iii) Notifying the requester that he or she does not maintain the record and providing, if known, the name and address of the governmental entity that does maintain the record.

- (iv) Notifying the requester that because of one of the extraordinary circumstances allowed by law,⁷ it cannot immediately approve or deny the request and giving the details why and when the governmental entity will be able to provide the record.

Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting for the benefit the public rather than a person.

No governmental entity, including governmental entities, is required to create or compile a record in response to a request for information.⁸ The governmental entity could, if it wanted to, rather than deny such a request, agree to create or compile the requested information for a negotiated fee.

One of the great problems with records request is how to handle the "serial requester." By this I mean the person who continually asks for the same records over and over again. The law specifically provides that the governmental entity is not required to fulfill a person's request if the request duplicates prior records requests made by that same person.⁹

If the governmental entity is denying a request it should give a notice of denial that includes a description of the denied records, the reasons for the denial, including citations to the law relied on in making the determination to deny and a statement that the requester may appeal the decision and how to do so.¹⁰ If the governmental entity fails to

⁶ Utah Code 63G-2-203

⁷ The extraordinary circumstances are specified in 63G-2-204(4).

⁸ Utah Code section 63G-2-201(8)(a)

⁹ Utah Code section 63G-2-201(8)(a)(iv).

¹⁰ Utah Code section 63G-2-205

provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the records.

The law contains an appeals process for those wishing to either appeal a classification decision or an access decision. Governmental entities may by ordinance set up their own appeals process. The ordinance can also assist the city in document management issues such as retention schedules and fees for copying. The ordinance adopted must meet the standards of the law and be filed with the state archivist.¹¹ If an ordinance is not adopted then the provisions of state law apply. There is significant benefit in having an ordinance that tailors the act to the individual municipality. This includes the ability to handle the appeals process in-house and the ability to have some control over the records retention schedule.

If a governmental entity fails to provide a record and is wrong in doing so there is the possibility that the governmental entity will have to pay the requesters reasonable attorney's fees incurred in forcing the governmental entity to comply with the records request.¹²

What is a public record?

"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.

(b) "Record" does not mean:

(i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity in the employee's or officer's private capacity;
(ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;
(iii) material that is legally owned by an individual in the individual's private capacity;
(iv) material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;
(v) proprietary software;
(vi) junk mail or a commercial publication received by a governmental entity or an official or employee of a governmental entity;
(vii) a book that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public;

¹¹ Utah Code section 63G-2-701.

¹² Utah Code section 63G-2-802

(viii) material that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public, regardless of physical form or characteristics of the material;

(ix) a daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working;

(x) a computer program that is developed or purchased by or for any governmental entity for its own use;

(xi) a note or internal memorandum prepared as part of the deliberative process by:

(A) a member of the judiciary;

(B) an administrative law judge;

(C) a member of the Board of Pardons and Parole; or

(D) a member of any other body charged by law with performing a quasi-judicial function;

(xii) a telephone number or similar code used to access a mobile communication device that is used by an employee or officer of a governmental entity, provided that the employee or officer of the governmental entity has designated at least one business telephone number that is a public record as provided in Section 63G-2-301;

(xiii) information provided by the Public Employees' Benefit and Insurance Program, created in Section 49-20-103, to a county to enable the county to calculate the amount to be paid to a health care provider under Subsection 17-50-319(2)(e)(ii); or

(xiv) information that an owner of unimproved property provides to a local entity as provided in Section 11-42-205

Records that must be disclosed.

The following records are normally public:

(a) laws;

(b) the name, gender, gross compensation, job title, job description, business address, business email address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of a current or former employee or officer of the governmental entity, with very limited exception for undercover law enforcement personnel;

(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules;

(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity;

(f) judicial records;

(g) records or parts of records filed with county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights;

- (h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;
- (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;
- (l) voter registration records with limited exceptions;
- (m) an elected official's telephone number, if available, email address, and where that elected official may be reached as required by law;
- (n) for a school community council member, a telephone number, email address, where that elected official may be reached directly as required by law; and
- (o) annual audited financial statements of the Utah Educational Savings Plan.

(3) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under certain sections of the law:

- (a) administrative staff manuals, instructions to staff, and statements of policy;
- (b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;
- (c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;
- (d) contracts entered into by a governmental entity;
- (e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;
- (f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah;
- (g) chronological logs and initial contact reports;
- (h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;
- (i) empirical data contained in drafts if:
 - (i) the empirical data is not reasonably available to the requester elsewhere in similar form; and
 - (ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;
- (j) drafts that are circulated to anyone outside the organization;
- (k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;
- (l) original data in a computer program if the governmental entity chooses not to disclose the program;
- (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;

(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;

(p) records maintained by the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that evidence mineral production on government lands;

(q) final audit reports;

(r) occupational and professional licenses;

(s) business licenses; and

(t) a notice of violation, 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.

Right to inspect records and receive copies of records.

(1) (1) Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject making a proper request and paying the appropriate fees.

(2) A record is public unless otherwise expressly provided by statute.

(3) The following records are not public:

(a) a record that is properly classified as **private, controlled, or protected**.

The records that can be classified private, controlled, or protected are defined by law.

Private records.

(1) The following records are 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;

(d) records received by or generated by or for the Independent Legislative Ethics Commission, with limited exceptions;

(e) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual on certain limited conditions.

(f) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions;

(g) records or parts of records that a current or former employee has appropriately identified as private according to the requirements of law;

(h) that part of a record indicating a person's Social Security number or federal employer identification number;

(i) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number;

(j) a record that contains information about an individual, voluntarily provided by the individual, which goes into an electronic database that is designated by and administered under the authority of the Chief Information Officer and acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(k) information provided to the Commissioner of Insurance under certain specified circumstances;

(l) information obtained through a criminal background checks for water system operators;

(m) certain sex offender information;

(n) certain homeland security information; and

(o) electronic toll collection customer account information.

(2) The following records are private if properly classified by a governmental entity:

(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, with limited exceptions for disciplinary information;

(b) records describing an individual's finances, except for information on government employees salaries;

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

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

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it; and

(f) any portion of a record in the custody of the Division of Aging and Adult Services, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

Controlled records.

A record is controlled if:

- (1) the record contains medical, psychiatric, or psychological data about an individual;
- (2) the governmental entity reasonably believes that:
 - (a) releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual; or
 - (b) releasing the information would constitute a violation of normal professional practice and medical ethics; and
- (3) the governmental entity has properly classified the record.

Protected records.

The following records are protected if properly classified by a governmental entity:

- (1) trade secrets, as defined, if the person submitting the trade secret has made the appropriate request;
- (2) commercial information or nonindividual financial information obtained from a person under certain circumstances;
- (3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations or injure the state economy;
- (4) records the disclosure of which could cause commercial injury to, or advantage an actual competitor of a commercial project entity under limited provisions of the law;
- (5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;
- (6) pre contract award records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, with limited exceptions;
- (7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired with limited exceptions;
- (8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property with limited exceptions;
- (9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration if the disclosure would undermine the purposes of the proceedings;
- (10) records the disclosure of which would jeopardize the life or safety of an individual;
- (11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;
- (12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment,

probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity;

(19) personal files of a state legislator, including personal correspondence to or from a member of the Legislature and certain communications between members of legislative bodies and their staffs;

(20) certain records in the custody or control of the Office of Legislative Research and General Counsel;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, or similar divisions or entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, but not the ultimate decisions;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as

protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education in certain circumstances;

(38) accident reports, with specific exceptions;

(39) a notification of workers' compensation insurance coverage;

(40) some records of an institution within the state system of higher education which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution;

(41) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public;

(42) records that provide detail as to the location of an explosive;

(43) certain information contained in the statewide database of the Division of Aging and Adult Services;

(44) information contained in the Management Information System and Licensing Information Systems;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with law;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) records related to an emergency plan or program, which would jeopardize the safety of the general public; or the security of governmental property or programs;

(49) records of the Department of Agriculture and Food relating control of livestock diseases;

(50) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to

substantiate;

(51) an individual's home address, home telephone number, or personal mobile phone number under certain circumstances;

(52) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research;

(53) an initial proposal as defined by state law;

(54) any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote on whether or not to recommend that the voters retain a judge;

(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge with limited exceptions;

(56) records contained in the Management Information System;

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement;

(58) information requested by and provided to the Utah State 911 Committee;

(59) recorded Children's Justice Center investigative interviews, both video and audio;

(60) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources;

(61) records in the custody or control of the Office of Inspector General of Medicaid;

(62) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;

(63) certain information provided to the Department of Health or the Division of Occupational and Professional Licensing; and

Disclosure.

With limited exceptions the a governmental entity shall disclose a **private** record to the subject of the record and his or her legal equivalent

With limited exceptions a governmental entity shall disclose a **controlled** record to a physician, or the like, if it has a release from the subject of the record and to any person to whom the record must be disclosed pursuant to a court order.

A governmental entity shall disclose a **protected** record to the person who submitted the record or his or her legal equivalent; or pursuant to a court order.