

**OVERVIEW OF GRAMA**  
**Government Records Access and Management Act (1992)**  
**(§ 63G-2-101, *et seq.* -- Statutes to 2010)**

**I. GRAMA has three main elements.**

- A. Establishes a general rule that all government records are public, with limited exceptions.
- B. Requires state and local governments to classify their documents as either public or one of three kinds of non-public records and schedule records for retention.
- C. Establishes records requesting procedures, fees, and appeals.

**II. General rule that all records are public.**

- A. Has been the law in Utah since before statehood.
- B. “Public” is always the default position. §§ 63G-2-201(2); 63G-2-301(4); 63G-2-306(2).
- C. Exceptions:
  - 1. If another state statute specifically classifies a record or record series as non-public, that specific law trumps the general rule of openness (example – state law makes juvenile court records confidential). § 63G-2-201(2).
  - 2. If there is no specific state statute, then GRAMA recognizes that a record can be kept confidential if releasing the record “constitutes a clearly unwarranted invasion of personal privacy”. § 63G-2-302(2)(d).

**III. What’s a record?**

- A. Government records are subject to GRAMA regardless of format – papers, books, photographs, maps, electronic files, audio tapes, video tapes, computer data, e-mail, micro-film – as long as it is possible to make a duplicate of the record. § 63G-2-103(22)(a).
- B. A document is subject to GRAMA if the government receives, owns or keeps it – it is not necessary that the document be an official government record nor that it is required by law or business practice. § 63G-2-103(22)(a)(i); Conover v. Board of Education, 267 P.2d 768 (1954).
- C. GRAMA considers some materials as non-records and therefore not subject to release or classification:

1. Materials owned by an employee, temporary drafts, copyrighted materials, personal calendars or notes, proprietary computer programs, junk mail, judicial or quasi-judicial decision-makers' notes. § 63G-2-103(22)(b).

#### IV. Four classifications of records.

- A. Public records – the majority of government records and the official default position. GRAMA lists some records that are always public:
  1. Laws, public employee salaries and other job-related information, final opinions and decisions, legal opinions, open meeting minutes, land records, initial police reports, payments to contractors. § 63G-2-301(2).
  2. The list of public records is obviously not exhaustive, because of the default position that everything is public, with exceptions.
  3. A record that is not public can become so if the person who is the subject of the record consents in writing to public release.
- B. Private records – documents containing information about a specific person, where that person retains a privacy interest. Examples specifically mentioned in GRAMA include:
  1. Medical data, unemployment or welfare eligibility, Social Security numbers, library records, home addresses and other personal identifiers, financial information, any information about a person where release would constitute a “clearly unwarranted invasion of personal privacy.” § 63G-2-302.
  2. Home addresses and other identifiers for “at-risk” government employees (judges and law enforcement) can be made private at the request of those employees. § 63G-2-303.
- C. Controlled records – documents in a very narrow category that consists of medical or mental health information where the doctor or government says, “do not release the information to the subject of the records” (the patient). § 63G-2-304.
- D. Protected records – documents about governmental operations where the government retains a privacy interest. Examples specifically mentioned in GRAMA include:
  1. Trade secrets, test questions and answers (such as civil service or university), real property values before a sale is completed, information that would jeopardize life or safety, attorney-client records, minutes of

closed meetings, information concerning government audit or investigation procedures, material relating to jail security. § 63G-2-305.

**V. Requesting process.**

- A. A records request and the government's response are governed by GRAMA.
  - 1. A local government can establish its own records request and response procedures by ordinance, but these cannot materially depart from GRAMA requirements. § 63G-2-701.
- B. A requestor needs to identify with specificity the material wanted and needs to give his or her name, phone number and address. The government can require that the request be in writing. § 63G-2-204(1).
- C. The government is required to respond within a specific deadline – usually within ten days after the request. § 63G-2-204(3).
  - 1. The deadline can be shortened to five days if the requestor is a reporter and needs the record for publication. § 63G-2-204(3).
  - 2. The deadline can be extended (but not for an unreasonable or lengthy period) if the request is for a voluminous amount of records, the records are being currently used by the government, responding to the request requires extensive editing, or legal advice is needed to respond to the request. § 63G-2-204(5).
- D. The government can charge the requestor for the costs of duplication, including some employee time and indirect costs. The government can not charge if the requestor only wants to view the records or will do his or her own copying. § 63G-2-203.
- E. If the records request is for material that is part public and part non-public, the government is required to grant the request and edit out materials that are non-public. § 63G-2-308.
- F. If the government declines, in whole or in part, the records request, it must do so in writing, listing the reasons for non-disclosure (citing a statute) and explaining the process for appeal of that denial. § 63G-2-205.
- G. Appeal goes to the county's "chief administrative officer" and then to the State Records Committee. A county can adopt an ordinance setting its own appeal process (for instance, in Salt Lake County, an appeal goes to an internal administrative board and then to the County Council). Any further appeal is to District Court. § 63G-2-401.

## **VI. Records Retention.**

- A. GRAMA requires that local governments adopt a retention schedule for the various records they hold – this is used to determine when records are no longer necessary and may be destroyed. § 63G-2-701(1).
- B. GRAMA does not establish any specific retention schedule requirements, but a county should retain records for a reasonable time based on business need, potential litigation, and similar considerations. (Without any specifics regarding retention in the statute, a local government would be well-advised to adopt its own retention standards.)
- C. A county is required to file its retention schedules with State Archives and if the State thinks a county's retention schedule is too short, it may require the county to forward the particular record to the State for additional retention. § 63G-2-701(1)(g).

## **VII. Penalties and Remedies.**

- A. A government officer or employee may be subject to prosecution for a class B misdemeanor for intentionally disclosing confidential documents, for improperly gaining access to or using confidential documents, or for refusing to disclose a record which should be available under GRAMA. § 63G-2-801.
- B. Civil enforcement of GRAMA includes injunctive relief and attorneys' fees. It is a defense to civil liability for improper release of records under GRAMA if a government employee reasonably relied on a records requestor's apparent evidence of legal authority to obtain a record. §§ 63G-2-802; 63G-2-803.
- C. County employees are subject to employment disciplinary action for GRAMA violations. § 63G-2-804.

## **VIII. "Step Two" in the GRAMA process.**

- A. GRAMA specifically provides that, even if a record is legitimately classified as non-public, the government may still decide to disclose the record. § 63G-2-201(5).
- B. Utah court decisions and decisions of the State Records Committee have heavily relied on this second step in the process and have held that non-public records should still be released if the public interest in disclosure outweighs the privacy interests in non-disclosure.
- C. Interest from the news media, in a matter of broad public interest or controversy, may be sufficient to actually require, not just permit, disclosure of an otherwise confidential record.

- D. Deseret News v. Salt Lake County, 182 P.3d 372 (2008): The Utah Supreme Court recently issued a decision which very strongly required the County to disclose records regarding an employee disciplinary matter.
1. The Court acknowledges a legislative intent that records be open and public.
  2. The County should have examined the individual investigative record at issue and should have made its classification decision based on the content of that record, not a blanket classification decision, made in advance and generally applicable to all such records.
  3. GRAMA requests should not be adversarial combat, but an impartial balancing of public interests. Government's goal should be to achieve the goals of GRAMA, not to support its own preference in classification.
  4. Misconduct by public employees in the government workplace is a matter of strong public interest. Employees have little or no personal privacy interest in such episodes. Government accountability outweighs personal privacy interests.

