

# GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT (“GRAMA”) OVERVIEW

## UTAH CODE ANN. §§ 63G-2-101 to -901 (2012)

- I. Definition of “Record”
- II. Classifications
- III. GRAMA Requests
- IV. Records Sharing
- V. Subpoenas
- VI. Penalties
- VII. Other Laws

### I. Definition of “Record”

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.

UTAH CODE ANN. § 63G-2-103(22)(a).

b. The statute excludes certain materials that may otherwise fit the definition or “record,” such as library books, patented material and personal notes or property of government employees. UTAH CODE ANN. § 63G-2-103(22)(b).

### II. Classifications

#### a. “Public” Records.

- i. A record is “Public” unless otherwise expressly provided by statute. UTAH CODE ANN. § 63G-2-201(2).
- ii. The statute includes a non-exhaustive list of “records that are public except to the extent they contain information expressly permitted to be treated confidential[.]” UTAH CODE ANN. § 63G-2-301(2)

#### b. “Private” Records.

- i. Certain records regarding the privacy interest of a specific individual.
- ii. Listed in UTAH CODE ANN. § 63G-2-302:

(1)(b) “Records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data.”

(2)(d) “Other records containing data on individuals the disclosure of which constitutes a *clearly unwarranted* invasion of personal privacy.”

- iii. Private information of “at-risk” government employees.
  - A. Certain government employees, including deputy district attorneys, may arrange to have a government entity classify its records disclosing the home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions of themselves or family members as “Private.” UTAH CODE ANN. § 63G-2-303.
- iv. “Private” records are generally available only to the subject of the record. UTAH CODE ANN. § 63G-2-202(1)(a)

**c. “Controlled” Records.**

- i. Narrow class of medical records where the doctor or the appropriate government agency determines that the record should not be given to the subject of the record.
- ii. Described in UTAH CODE ANN. § 63G-2-304.
- iii. “Controlled” records are generally available only to health care providers, insurance companies or public health agencies upon submission of a signed waiver from the subject and acknowledgement of the terms of disclosure. UTAH CODE ANN. § 63G-2-202(2).

**d. “Protected” Records**

- i. Certain records in which the government itself has a privacy right or other interest.
- ii. Listed in UTAH CODE ANN. § 63G-2-305:

(9) Includes records created or maintained for criminal enforcement purposes if release of the records would interfere with enforcement action, deprive a person of a fair trial or disclose sources or techniques not generally known outside the government.

(10) “Records the disclosure of which would jeopardize the life or safety of an individual.”

- a. Specifically includes the address, telephone number, and impact statement of a crime victim used to provide the victim notice of hearings. UTAH CODE ANN. § 77-38-3(11).

(16) “Records that are subject to the attorney-client privilege.”

(17) "Records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding."

(21) "Drafts, unless otherwise classified as public."

(22) "Records concerning a governmental entity's strategy about . . . imminent or pending litigation."

iii. "Protected" records are generally available only to the person who submitted the record.

**e. Balancing Test.**

i. A governmental entity may disclose a "Protected" record or certain "Private" records if it determines there is no interest in restricting access to the record or *the interests favoring access are greater than or equal to the interest favoring restriction of access*. UTAH CODE ANN. § 63G-2-201(5)(b).

**III. GRAMA Requests**

- a. Requests must be *written*. UTAH CODE ANN. § 63G-2-204(1).
- b. Requests must identify a *record* with "*reasonable specificity*." UTAH CODE ANN. § 63G-2-204(1)(b).
- c. A government entity is *not required* to create a record or tailor information in response to a request. Nor must it provide records that are already publicly accessible elsewhere. UTAH CODE ANN. § 63G-2-201(8)(a).
- d. A person dissatisfied with Salt Lake County's classifications or response to a records request may appeal to the County Council. County Council decisions may be appealed to District Court. Section 2.82.100, Salt Lake County Code of Ordinances, 2001.

**IV. Records Sharing**

- a. Governmental entities are allowed to share their "Private," "Controlled" and "Protected" records with each other under certain circumstances.
  - i. Example: Where the "requesting entity enforces, litigates, or investigates . . . criminal . . . law and the record is necessary to a proceeding or investigation. UTAH CODE ANN. § 63G-2-206(1)(b).
- b. Before a record is shared, the originating entity must inform the recipient agency of the record's classification and the accompanying restrictions on access. UTAH CODE ANN. § 63G-2-206(4)(a).
- c. The recipient agency is subject to the same restrictions on disclosure of the record as the originating entity. UTAH CODE ANN. § 63G-2-206(6)(a).

**V. Subpoenas**

- a. An objection to a subpoena is proper where the subpoena requires the disclosure of "privileged or other protected matter and no exception or waiver applies." UTAH R. CIV. PRO. 45(e)(3)(D).

b. “Private,” “Controlled” or “Protected” records are “privileged from discovery” “[u]ntil the court . . . orders disclosure.” UTAH CODE ANN. § 63G-2-207(2)(a)(ii).

- i. In order to obtain privileged records by subpoena, the party issuing the subpoena must make a showing sufficient to enable the Court to:
- A. Find that the records deal with the matter in controversy;
  - B. Consider the merits of the request for access to the records;
  - C. Consider and, where appropriate, limit the use and further disclosure of the records;
  - D. Find the interests favoring access outweigh the interests favoring restriction of access; and
  - E. Find the court has authority independent of GRAMA to order disclosure if access to the record is otherwise restricted by other state or federal law.

UTAH CODE ANN. §§ 63G-2-202(7) and -207(2)(a)(ii).

## **VI. Penalties**

- a. Class B misdemeanors for:
- a. A public employee who intentionally discloses a confidential document, knowing that disclosure is prohibited.
  - b. A person who improperly (by false pretenses, bribery or theft) gains access to or obtains a copy of a confidential record.
  - c. A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by law.

UTAH CODE ANN. § 63G-2-801.

## **VII. Other Laws**

- a. A specific rule prevails over the general rule. UTAH CODE ANN. § 63G-2-201(6)(a):

The disclosure of a record to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation . . . is governed by the specific provisions of that statute, rule, or regulation.

- b. If access of a record is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, such record is “Exempt” from GRAMA. UTAH CODE ANN. § 63G-2-201(3)(b).

- c. Examples:
- i. The Health Insurance Portability and Accountability Act of 1996 (HIPAA)
    - A. Protects all health information that identifies an individual. “Health Information” is defined to include any information that is created or received by a health care provider, health plan, public health authority, employer, school, life insurer or health care clearinghouse and which is related to past, present or future physical or mental health of an individual, including the provision of or payment for an individual’s care. 45 C.F.R. § 164.501.

- B. Penalty: Fine of up to \$1,500,000 per calendar year (depending on the circumstances/severity). Criminal penalties in some situations.
- C. The District Attorney's Office is not a covered entity. But Salt Lake County is a "Hybrid Entity" (due to agencies such as CJS and Valley Mental Health).

UTAH CODE ANN. § 63G-2-107.

ii. 42 C.F.R. Part 2

- A. Protects any information that identifies a person as a (current or former) alcohol or drug patient, either directly or indirectly. 42 C.F.R. § 2.11.
- B. Penalty: Fine of up to \$500; up to \$5,000 for each subsequent offense.
- C. This regulation applies to federally-assisted alcohol and drug abuse programs. The District Attorney's Office is not a covered entity, but CJS is a covered entity.

iii. UCJIS Records:

- A. All criminal history record information obtained from UCJIS is protected from further dissemination (with certain exceptions). UTAH CODE ANN. § 53-10-108(4).
- B. Penalty: "It is a class B misdemeanor for a person to knowingly or intentionally access, use, disclose, or disseminate a record created, maintained, or to which access is granted by the [Criminal Investigations and Technical Services] division or any information contained in a record created, maintained, or to which access is granted by the division for a purpose prohibited or not permitted by statute, rule, regulation, or policy of a governmental entity." UTAH CODE ANN. § 53-10-108(11)(a).

d. County Ordinance – Personal Identifiers

- i. All personal identifiers maintained by a County agency must be kept confidential and secure, and used only for a bona fide governmental necessity. Regulates an agency's ability to collect such information. "Personal Identifiers" is defined to include "an individual's home address, home telephone number, personal cellular telephone number, signature, social security number, birth date, personal email address, driver's license number, passport number, employee identification number, and any financial identification numbers, including but not limited to bank account numbers, credit card numbers and information obtained to authenticate a cardholder or effectuate a payment card transaction." Chapter 2.81, Salt Lake County Code of Ordinances, 2001.
- ii. Penalty: Class B misdemeanor to knowingly violate this rule; appropriate disciplinary action.

e. *Deseret News Publishing Co. v. Salt Lake County*, 182 P.3d 372, 378-379 (2008).