

# Utah Code 63G-2

## Government Records Access and Management Act

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Utah State Archives and Records Service

# Government Records Access and Management Act

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## Part 1. General Provisions

### 63G-2-101. Title.

This chapter is known as the "Government Records Access and Management Act."

*Renumbered and Amended by Chapter 382, 2008 General Session*

### 63G-2-102. Legislative intent.

- (1) In enacting this act, the Legislature recognizes two constitutional rights:
  - (a) the public's right of access to information concerning the conduct of the public's business; and
  - (b) the right of privacy in relation to personal data gathered by governmental entities.
- (2) The Legislature also recognizes a public policy interest in allowing a government to restrict access to certain records, as specified in this chapter, for the public good.
- (3) It is the intent of the Legislature to:
  - (a) promote the public's right of easy and reasonable access to unrestricted public records;
  - (b) specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access;
  - (c) prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided in this chapter;
  - (d) provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and which are consistent with nationwide standards of information practices;
  - (e) favor public access when, in the application of this act, countervailing interests are of equal weight; and
  - (f) establish fair and reasonable records management practices.

*Renumbered and Amended by Chapter 382, 2008 General Session*

### 63G-2-103. Definitions.

As used in this chapter:

- (1) "Audit" means:
  - (a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or
  - (b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.
- (2) "Chronological logs" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show:
  - (a) the time and general nature of police, fire, and paramedic calls made to the agency; and
  - (b) any arrests or jail bookings made by the agency.
- (3) "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).
- (4) (a) "Computer program" means:
  - (i) a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system; and
  - (ii) any associated documentation and source material that explain how to operate the computer program.

- (b) "Computer program" does not mean:
  - (i) the original data, including numbers, text, voice, graphics, and images;
  - (ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or
  - (iii) the mathematical or statistical formulas, excluding the underlying mathematical algorithms contained in the program, that would be used if the manipulated forms of the original data were to be produced manually.
- (5) (a) "Contractor" means:
  - (i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or
  - (ii) any private, nonprofit organization that receives funds from a governmental entity.
 (b) "Contractor" does not mean a private provider.
- (6) "Controlled record" means a record containing data on individuals that is controlled as provided by Section 63G-2-304.
- (7) "Designation," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.
- (8) "Elected official" means each person elected to a state office, county office, municipal office, school board or school district office, local district office, or special service district office, but does not include judges.
- (9) "Explosive" means a chemical compound, device, or mixture:
  - (a) commonly used or intended for the purpose of producing an explosion; and
  - (b) that contains oxidizing or combustive units or other ingredients in proportions, quantities, or packing so that:
    - (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases; and
    - (ii) the resultant gaseous pressures are capable of:
      - (A) producing destructive effects on contiguous objects; or
      - (B) causing death or serious bodily injury.
- (10) "Government audit agency" means any governmental entity that conducts an audit.
- (11) (a) "Governmental entity" means:
  - (i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, the State Board of Education, the State Board of Regents, and the State Archives;
  - (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;
  - (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;
  - (iv) any state-funded institution of higher education or public education; or
  - (v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.
 (b) "Governmental entity" also means:
  - (i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business; and

- (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking.
- (c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section 53B-8a-103.
- (12) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.
- (13) "Individual" means a human being.
- (14) (a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:
  - (i) the date, time, location, and nature of the complaint, the incident, or offense;
  - (ii) names of victims;
  - (iii) the nature or general scope of the agency's initial actions taken in response to the incident;
  - (iv) the general nature of any injuries or estimate of damages sustained in the incident;
  - (v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or
  - (vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.
 (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 (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).
- (15) "Legislative body" means the Legislature.
- (16) "Notice of compliance" means a statement confirming that a governmental entity has complied with a records committee order.
- (17) "Person" means:
  - (a) an individual;
  - (b) a nonprofit or profit corporation;
  - (c) a partnership;
  - (d) a sole proprietorship;
  - (e) other type of business organization; or
  - (f) any combination acting in concert with one another.
- (18) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.
- (19) "Private record" means a record containing data on individuals that is private as provided by Section 63G-2-302.
- (20) "Protected record" means a record that is classified protected as provided by Section 63G-2-305.
- (21) "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).
- (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.
 (b) "Record" does not mean:
  - (i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity:
    - (A) in a capacity other than the employee's or officer's governmental

- capacity; or
  - (B) that is unrelated to the conduct of the public's business;
  - (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;
  - (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);
  - (xiv) information that an owner of unimproved property provides to a local entity as provided in Section 11-42-205; or
  - (xv) a video or audio recording of an interview, or a transcript of the video or audio recording, that is conducted at a Children's Justice Center established under Section 67-5b-102.
- (23) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.
- (24) "Records committee" means the State Records Committee created in Section 63G-2-501.
- (25) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.
- (26) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.
- (27) "Sponsored research" means research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget:
- (a) conducted:

- (i) by an institution within the state system of higher education defined in Section 53B-1-102; and
- (ii) through an office responsible for sponsored projects or programs; and
- (b) funded or otherwise supported by an external:
  - (i) person that is not created or controlled by the institution within the state system of higher education; or
  - (ii) federal, state, or local governmental entity.
- (28) "State archives" means the Division of Archives and Records Service created in Section 63A-12-101.
- (29) "State archivist" means the director of the state archives.
- (30) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

*Amended by Chapter 265, 2015 General Session*

#### **63G-2-104. Administrative Procedures Act not applicable.**

Title 63G, Chapter 4, Administrative Procedures Act, does not apply to this chapter except as provided in Section 63G-2-603.

*Renumbered and Amended by Chapter 382, 2008 General Session*

#### **63G-2-105. Confidentiality agreements.**

If a governmental entity or political subdivision receives a request for a record that is subject to a confidentiality agreement executed before April 1, 1992, the law in effect at the time the agreement was executed, including late judicial interpretations of the law, shall govern access to the record, unless all parties to the confidentiality agreement agree in writing to be governed by the provisions of this chapter.

*Renumbered and Amended by Chapter 382, 2008 General Session*

#### **63G-2-106. Records of security measures.**

The records of a governmental entity or political subdivision regarding security measures designed for the protection of persons or property, public or private, are not subject to this chapter. These records include:

- (1) security plans;
- (2) security codes and combinations, and passwords;
- (3) passes and keys;
- (4) security procedures; and
- (5) building and public works designs, to the extent that the records or information relate to the ongoing security measures of a public entity.

*Renumbered and Amended by Chapter 382, 2008 General Session*

#### **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.

*Amended by Chapter 380, 2016 General Session*

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

Each records officer of a governmental entity or political subdivision shall, on an annual basis, successfully complete online training and obtain certification from state archives in accordance with Section 63A-12-110.

*Enacted by Chapter 377, 2012 General Session*

## Part 2. Access to Records

### 63G-2-201 Right to inspect records and receive copies of records.

- (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 to Sections 63G-2-203 and 63G-2-204.
- (2) A record is public unless otherwise expressly provided by statute.
- (3) The following records are not public:
  - (a) a record that is private, controlled, or protected under Sections 63G-2-302, 63G-2-303, 63G-2-304, and 63G-2-305; and
  - (b) a record to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.
- (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or 63G-2-305 may be classified private, controlled, or protected.
- (5)
  - (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section 63G-2-202, 63G-2-206, or 63G-2-303.
  - (b) A governmental entity may disclose a record that is private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee, determines that:
    - (i) there is no interest in restricting access to the record; or
    - (ii) the interests favoring access are greater than or equal to the interest favoring restriction of access.
  - (c) In addition to the disclosure under Subsection (5)(b), a governmental entity may disclose a record that is protected under Subsection 63G-2-305(51) if:
    - (i) the head of the governmental entity, or a designee, determines that the disclosure:
      - (A) is mutually beneficial to:
        - (I) the subject of the record;
        - (II) the governmental entity; and
        - (III) the public; and
      - (B) serves a public purpose related to:
        - (I) public safety; or
        - (II) consumer protection; and
    - (ii) the person who receives the record from the governmental entity agrees not to use or allow the use of the record for advertising or solicitation purposes.
- (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, including a record for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.
  - (b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.
- (7) A governmental entity shall provide a person with a certified copy of a record if:
  - (a) the person requesting the record has a right to inspect it;
  - (b) the person identifies the record with reasonable specificity; and
  - (c) the person pays the lawful fees.
- (8)
  - (a) In response to a request, a governmental entity is not required to:

- (i) create a record;
  - (ii) compile, format, manipulate, package, summarize, or tailor information;
  - (iii) provide a record in a particular format, medium, or program not currently maintained by the governmental entity;
  - (iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or
  - (v) fill a person's records request if:
    - (A) the record requested is accessible in the identical physical form and content in a public publication or product produced by the governmental entity receiving the request;
    - (B) the governmental entity provides the person requesting the record with the public publication or product; and
    - (C) the governmental entity specifies where the record can be found in the public publication or product.
- (b) Upon request, a governmental entity may provide a record in a particular form under Subsection (8)(a)(ii) or (iii) if:
- (i) the governmental entity determines it is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and
  - (ii) the requester agrees to pay the governmental entity for providing the record in the requested form in accordance with Section 63G-2-203.
- (9)
- (a) A governmental entity may allow a person requesting more than 50 pages of records to copy the records if:
- (i) the records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and
  - (ii) the governmental entity provides reasonable safeguards to protect the public from the potential for loss of a public record.
- (b) When the requirements of Subsection (9)(a) are met, the governmental entity may:
- (i) provide the requester with the facilities for copying the requested records and require that the requester make the copies; or
  - (ii) allow the requester to provide the requester's own copying facilities and personnel to make the copies at the governmental entity's offices and waive the fees for copying the records.
- (10)
- (a) A governmental entity that owns an intellectual property right and that offers the intellectual property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to be in the public interest.
- (b) Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the intellectual property right.
- (11) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this chapter.
- (12) Subject to the requirements of Subsection (8), a governmental entity shall provide access to an electronic copy of a record in lieu of providing access to its paper equivalent if:
- (a) the person making the request requests or states a preference for an electronic copy;
  - (b) the governmental entity currently maintains the record in an electronic format that is reproducible and may be provided without reformatting or conversion; and
  - (c) the electronic copy of the record:
    - (i) does not disclose other records that are exempt from disclosure; or
    - (ii) may be segregated to protect private, protected, or controlled information from disclosure without the undue expenditure of public resources or funds.

- (13) In determining whether a record is properly classified as private under Subsection 63G-2-302(2)(d), the governmental entity, State Records Committee, local appeals board, or court shall consider and weigh:
- (a) any personal privacy interests, including those in images, that would be affected by disclosure of the records in question; and
  - (b) any public interests served by disclosure.

*Amended by Chapter 410, 2016 General Session*

**63G-2-202 Access to private, controlled, and protected documents.**

- (1) Upon request, and except as provided in Subsection (11)(a), a governmental entity shall disclose a private record to:
- (a) the subject of the record;
  - (b) the parent or legal guardian of an unemancipated minor who is the subject of the record;
  - (c) the legal guardian of a legally incapacitated individual who is the subject of the record;
  - (d) any other individual who:
    - (i) has a power of attorney from the subject of the record;
    - (ii) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or
    - (iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a health care provider, as defined in Section 26-33a-102, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or
  - (e) any person to whom the record must be provided pursuant to:
    - (i) court order as provided in Subsection (7); or
    - (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.
- (2)
- (a) Upon request, a governmental entity shall disclose a controlled record to:
    - (i) a physician, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:
      - (A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and
      - (B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and
    - (ii) any person to whom the record must be disclosed pursuant to:
      - (A) a court order as provided in Subsection (7); or
      - (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.
  - (b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.
- (3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.
- (4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental entity shall disclose a protected record to:
- (a) the person that submitted the record;
  - (b) any other individual who:
    - (i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or
    - (ii) submits a notarized release from all persons, governmental entities, or political

- subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;
- (c) any person to whom the record must be provided pursuant to:
    - (i) a court order as provided in Subsection (7); or
    - (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; or
  - (d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).
- (5) A governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, state, the United States, or a foreign government only as provided by Section 63G-2-206.
- (6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.
- (7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:
- (a) the record deals with a matter in controversy over which the court has jurisdiction;
  - (b) the court has considered the merits of the request for access to the record;
  - (c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:
    - (i) privacy interests in the case of private or controlled records;
    - (ii) business confidentiality interests in the case of records protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and
    - (iii) privacy interests or the public interest in the case of other protected records;
  - (d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access; and
  - (e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.
- (8)
- (a) Except as provided in Subsection (8)(d), a governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:
    - (i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;
    - (ii) determines that:
      - (A) the proposed research is bona fide; and
      - (B) the value of the research is greater than or equal to the infringement upon personal privacy;
    - (iii)
      - (A) requires the researcher to assure the integrity, confidentiality, and security of the records; and
      - (B) requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;
    - (iv) prohibits the researcher from:
      - (A) disclosing the record in individually identifiable form, except as provided in Subsection (8)(b); or
      - (B) using the record for purposes other than the research approved by the governmental entity; and
    - (v) secures from the researcher a written statement of the researcher's understanding of and agreement to the conditions of this Subsection (8) and the researcher's understanding that violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution under Section 63G-2-801.

- (b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.
  - (c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).
  - (d) A governmental entity may not disclose or authorize disclosure of a private record for research purposes as described in this Subsection (8) if the private record is a record described in Subsection 63G-2-302(1)(u).
- (9)
- (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity may disclose to persons other than those specified in this section records that are:
    - (i) private under Section 63G-2-302; or
    - (ii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.
  - (b) Under Subsection 63G-2-403(11)(b), the records committee may require the disclosure to persons other than those specified in this section of records that are:
    - (i) private under Section 63G-2-302;
    - (ii) controlled under Section 63G-2-304; or
    - (iii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.
  - (c) Under Subsection 63G-2-404(7), the court may require the disclosure of records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected under Section 63G-2-305 to persons other than those specified in this section.
- (10) A record contained in the Management Information System, created in Section 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be disclosed to any person except the person who is alleged in the report to be a perpetrator of abuse, neglect, or dependency.
- (11)
- (a) A private record described in Subsection 63G-2-302(2)(f) may only be disclosed as provided in Subsection (1)(e).
  - (b) A protected record described in Subsection 63G-2-305(43) may only be disclosed as provided in Subsection (4)(c) or Section 62A-3-312.
- (12)
- (a) A private, protected, or controlled record described in Section 62A-16-301 shall be disclosed as required under:
    - (i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and
    - (ii) Subsections 62A-16-302(1) and (6).
  - (b) A record disclosed under Subsection (12)(a) shall retain its character as private, protected, or controlled.

*Amended by Chapter 348, 2016 General Session*

### **63G-2-203. Fees.**

- (1) A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of providing a record. This fee shall be approved by the governmental entity's executive officer.
- (2)
  - (a) When a governmental entity compiles a record in a form other than that normally maintained by the governmental entity, the actual costs under this section may include the following:
    - (i) the cost of staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;
    - (ii) the cost of staff time for search, retrieval, and other direct administrative costs for

- complying with a request; and
- (iii) in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users, and the administrative costs as set forth in Subsections (2)(a)(i) and (ii).
- (b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request.
- (c) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first quarter hour of staff time.
- (3)
- (a) Fees shall be established as provided in this Subsection (3).
- (b) A governmental entity with fees established by the Legislature:
- (i) shall establish the fees defined in Subsection (2), or other actual costs associated with this section through the budget process; and
- (ii) may use the procedures of Section 63J-1-504 to set fees until the Legislature establishes fees through the budget process.
- (c) Political subdivisions shall establish fees by ordinance or written formal policy adopted by the governing body.
- (d) The judiciary shall establish fees by rules of the judicial council.
- (4) A governmental entity may fulfill a record request without charge and is encouraged to do so if it determines that:
- (a) releasing the record primarily benefits the public rather than a person;
- (b) the individual requesting the record is the subject of the record, or an individual specified in Subsection 63G-2-202(1) or (2); or
- (c) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.
- (5) A governmental entity may not charge a fee for:
- (a) reviewing a record to determine whether it is subject to disclosure, except as permitted by Subsection (2)(a)(ii); or
- (b) inspecting a record.
- (6)
- (a) A person who believes that there has been an unreasonable denial of a fee waiver under Subsection (4) may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under Section 63G-2-205.
- (b) The adjudicative body hearing the appeal:
- (i) shall review the fee waiver de novo, but shall review and consider the governmental entity's denial of the fee waiver and any determination under Subsection (4); and
- (ii) has the same authority when a fee waiver or reduction is denied as it has when the inspection of a public record is denied.
- (7)
- (a) All fees received under this section by a governmental entity subject to Subsection (3)(b) shall be retained by the governmental entity as a dedicated credit.
- (b) Those funds shall be used to recover the actual cost and expenses incurred by the governmental entity in providing the requested record or record series.
- (8)
- (a) A governmental entity may require payment of past fees and future estimated fees before beginning to process a request if:
- (i) fees are expected to exceed \$50; or
- (ii) the requester has not paid fees from previous requests.
- (b) Any prepaid amount in excess of fees due shall be returned to the requester.
- (9) This section does not alter, repeal, or reduce fees established by other statutes or legislative acts.

- (10)
- (a) Notwithstanding Subsection (3)(c), fees for voter registration records shall be set as provided in this Subsection (10).
  - (b) The lieutenant governor shall:
    - (i) after consultation with county clerks, establish uniform fees for voter registration and voter history records that meet the requirements of this section; and
    - (ii) obtain legislative approval of those fees by following the procedures and requirements of Section 63J-1-504.

*Amended by Chapter 90, 2016 General Session*

**63G-2-204. Requests -- Time limit for response and extraordinary circumstances.**

- (1) A person making a request for a record shall furnish the governmental entity with a written request containing:
  - (a) the person's name, mailing address, and daytime telephone number, if available; and
  - (b) a description of the record requested that identifies the record with reasonable specificity.
- (2)
  - (a) Subject to Subsection (2)(b), a person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record.
  - (b) In response to a request for a record, a governmental entity may not provide a record that it has received under Section 63G-2-206 as a shared record if the record was shared for the purpose of auditing, if the governmental entity is authorized by state statute to conduct an audit.
  - (c) If a governmental entity is prohibited from providing a record under Subsection (2)(b), it shall:
    - (i) deny the records request; and
    - (ii) inform the person making the request that records requests must be submitted to the governmental entity that prepares, owns, or retains the record.
  - (d) A governmental entity may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.
- (3) After receiving a request for a record, a governmental entity shall:
  - (a) review each request that seeks an expedited response and notify, within five business days after receiving the request, each requester that has not demonstrated that their record request benefits the public rather than the person that their response will not be expedited; and
  - (b) as soon as reasonably possible, but no later than 10 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:
    - (i) approve the request and provide a copy of the record;
    - (ii) deny the request in accordance with the procedures and requirements of Section 63G-2-205;
    - (iii) notify the requester that it does not maintain the record requested and provide, if known, the name and address of the governmental entity that does maintain the record; or
    - (iv) notify the requester that because of one of the extraordinary circumstances listed in Subsection (5), it cannot immediately approve or deny the request, and include with the notice:
      - (A) a description of the circumstances that constitute the extraordinary circumstances; and
      - (B) the date when the records will be available, consistent with the requirements of Subsection (6).

- (4) 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 to benefit the public rather than a person.
- (5) The following circumstances constitute “extraordinary circumstances” that allow a governmental entity to delay approval or denial by an additional period of time as specified in Subsection (6) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (3):
- (a) another governmental entity is using the record, in which case the originating governmental entity shall promptly request that the governmental entity currently in possession return the record;
  - (b) another governmental entity is using the record as part of an audit, and returning the record before the completion of the audit would impair the conduct of the audit;
  - (c)
    - (i) the request is for a voluminous quantity of records or a record series containing a substantial number of records; or
    - (ii) the requester seeks a substantial number of records or records series in requests filed within five working days of each other;
  - (d) the governmental entity is currently processing a large number of records requests;
  - (e) the request requires the governmental entity to review a large number of records to locate the records requested;
  - (f) the decision to release a record involves legal issues that require the governmental entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;
  - (g) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or
  - (h) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.
- (6) If one of the extraordinary circumstances listed in Subsection (5) precludes approval or denial within the time specified in Subsection (3), the following time limits apply to the extraordinary circumstances:
- (a) for claims under Subsection (5)(a), the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder’s work;
  - (b) for claims under Subsection (5)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;
  - (c) for claims under Subsections (5)(c), (d), and (e), the governmental entity shall:
    - (i) disclose the records that it has located which the requester is entitled to inspect;
    - (ii) provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request;
    - (iii) complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible; and
    - (iv) for any person that does not establish a right to an expedited response as authorized by Subsection (3), a governmental entity may choose to:
      - (A) require the person to provide for copying of the records as provided in Subsection 63G-2-201(9); or
      - (B) treat a request for multiple records as separate record requests, and respond sequentially to each request;
  - (d) for claims under Subsection (5)(f), the governmental entity shall either approve or deny the request within five business days after the response time specified for the original request has expired;
  - (e) for claims under Subsection (5)(g), the governmental entity shall fulfill the request within 15 business days from the date of the original request; or
  - (f) for claims under Subsection (5)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.
- (7)
- (a) If a request for access is submitted to an office of a governmental entity other than that

specified by rule in accordance with Subsection (2), the office shall promptly forward the request to the appropriate office.

- (b) If the request is forwarded promptly, the time limit for response begins when the record is received by the office specified by rule.
- (8) If the governmental entity fails to 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 record.

*Amended by Chapter 340, 2011 General Session*

### **63G-2-205. Denials.**

- (1) If the governmental entity denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.
- (2) The notice of denial shall contain the following information:
- (a) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);
  - (b) citations to the provisions of this chapter, court rule or order, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);
  - (c) a statement that the requester has the right to appeal the denial to the chief administrative officer of the governmental entity; and
  - (d) the time limits for filing an appeal, and the name and business address of the chief administrative officer of the governmental entity.
- (3) Unless otherwise required by a court or agency of competent jurisdiction, a governmental entity may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process, including judicial appeal.

*Renumbered and Amended by Chapter 382, 2008 General Session*

### **63G-2-206. Sharing records.**

- (1) 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 if the requesting entity:
- (a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;
  - (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;
  - (c) is authorized by state statute to conduct an audit and the record is needed for that purpose;
  - (d) is one that collects information for presentence, probationary, or parole purposes; or
  - (e)
    - (i) is:
      - (A) the Legislature;
      - (B) a legislative committee;
      - (C) a member of the Legislature; or
      - (D) a legislative staff member acting at the request of the Legislature, a legislative committee, or a member of the Legislature; and
    - (ii) requests the record in relation to the Legislature's duties including:
      - (A) the preparation or review of a legislative proposal or legislation;
      - (B) appropriations; or
      - (C) an investigation or review conducted by the Legislature or a legislative committee.

- (2)
- (a) A governmental entity may provide a private, controlled, or protected record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:
    - (i) that the record or record series is necessary to the performance of the governmental entity's duties and functions;
    - (ii) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and
    - (iii) that the use of the record or record series produces a public benefit that is greater than or equal to the individual privacy right that protects the record or record series.
  - (b) A governmental entity may provide a private, controlled, or protected record or record series to a contractor or a private provider according to the requirements of Subsection (6)(b).
- (3)
- (a) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:
    - (i) is entitled by law to inspect the record;
    - (ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or
    - (iii) is an entity described in Subsection (1)(a), (b), (c), (d), or (e).
  - (b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection 63G-2-305(4).
- (4) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, a foreign government, or to a contractor or private provider, the originating governmental entity shall:
- (a) inform the recipient of the record's classification and the accompanying restrictions on access; and
  - (b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.
- (5) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1) and (2) without complying with the procedures of Subsection (2) or (4) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.
- (6)
- (a) Subject to Subsections (6)(b) and (c), an entity receiving a record under this section is subject to the same restrictions on disclosure of the record as the originating entity.
  - (b) A contractor or a private provider may receive information under this section only if:
    - (i) the contractor or private provider's use of the record or record series produces a public benefit that is greater than or equal to the individual privacy right that protects the record or record series;
    - (ii) the record or record series it requests:
      - (A) is necessary for the performance of a contract with a governmental entity;
      - (B) will only be used for the performance of the contract with the governmental entity;
      - (C) will not be disclosed to any other person; and
      - (D) will not be used for advertising or solicitation purposes; and
    - (iii) the contractor or private provider gives written assurance to the governmental entity that is providing the record or record series that it will adhere to the restrictions of this Subsection (6)(b).

- (c) The classification of a record already held by a governmental entity and the applicable restrictions on disclosure of that record are not affected by the governmental entity's receipt under this section of a record with a different classification that contains information that is also included in the previously held record.
- (7) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.
- (8) The following records may not be shared under this section:
  - (a) records held by the Division of Oil, Gas, and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining;
  - (b) records of publicly funded libraries as described in Subsection 63G-2-302(1)(c); and
  - (c) a record described in Section 63G-12-210.
- (9) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

*Amended by Chapter 377, 2012 General Session*

**63G-2-207. Subpoenas -- Court ordered disclosure for discovery.**

- (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.
- (2)
  - (a)
    - (i) Except as otherwise provided in Subsection (2)(c), in judicial or administrative proceedings in which an individual is requesting discovery of records classified private, controlled, or protected under this chapter, or otherwise restricted from access by other statutes, the court, or an administrative law judge shall follow the procedure in Subsection 63G-2-202(7) before ordering disclosure.
    - (ii) Until the court or an administrative law judge orders disclosure, these records are privileged from discovery.
  - (b) If, the court or administrative order requires disclosure, the terms of the order may limit the requester's further use and disclosure of the record in accordance with Subsection 63G-2-202(7), in order to protect the privacy interests recognized in this chapter.
  - (c) Unless a court or administrative law judge imposes limitations in a restrictive order, this section does not limit the right to obtain:
    - (i) records through the procedures set forth in this chapter; or
    - (ii) medical records discoverable under state or federal court rules as authorized by Subsection 63G-2-302(3).

*Renumbered and Amended by Chapter 382, 2008 General Session*

**63G-2-208. Public repository of legislative email.**

- (1) As used in this section, "repository" means the repository of email described in Subsection (2).
- (2)
  - (a) On or before January 1, 2014, the Legislature shall post on its website a publicly accessible repository containing email that legislators transfer to it as provided in this section.
  - (b) The repository shall be searchable by sender, receiver, and subject.
- (3) A legislator may transfer to the repository an email that the legislator sent or received.
- (4) An email in the repository may be removed from the repository if:
  - (a) the email was accidentally transferred to the repository;
  - (b) it is determined that the email is not a record or that the email is a private, protected, or controlled record;

- (c) the email is deleted pursuant to the Legislature's record retention policy; or
  - (d) for an email that is not removed from the repository earlier under Subsection (4)(a), (b), or (c), at least two years have passed after the day the legislator first sent or received the email.
- (5) A legislator's failure to transfer an email to the repository does not alone mean that the email is a private, protected, or controlled record.

*Enacted by Chapter 231, 2013 General Session*

### Part 3. Classification

#### 63G-2-301. Public records.

(1) As used in this section:

- (a) "Business address" means a single address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.
- (b) "Business email address" means a single email address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.
- (c) "Business telephone number" means a single telephone number of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(2) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63G-2-201(3)(b) and (6)(a):

- (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, 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;
- (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 by a governmental entity unless classified as protected as provided in Subsection 63G-2-305(17) or (18);
- (e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings Act, including the records of all votes of each member of the governmental entity;
- (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;
- (g) unless otherwise classified as private under Section 63G-2-303, records or parts of records filed with or maintained by 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, or other governmental entities that give public notice of:
  - (i) titles or encumbrances to real property;
  - (ii) restrictions on the use of real property;
  - (iii) the capacity of persons to take or convey title to real property; or
  - (iv) tax status for real and personal property;
- (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, including an individual's voting history, except for a voter

- registration record or those parts of a voter registration record that are classified as private under Subsection 63G-2-302(1)(j) or (k);
- (m) for an elected official, as defined in Section 11-47-102, a telephone number, if available, and email address, if available, where that elected official may be reached as required in Title 11, Chapter 47, Access to Elected Officials;
  - (n) for a school community council member, a telephone number, if available, and email address, if available, where that elected official may be reached directly as required in Section 53A-1a-108.1;
  - (o) annual audited financial statements of the Utah Educational Savings Plan described in Section 53B-8a-111; and
  - (p) an initiative packet, as defined in Section 20A-7-101, and a referendum packet, as defined in Section 20A-7-101, after the packet is submitted to a county clerk.
- (3) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b), Section 63G-2-302, 63G-2-304, or 63G-2-305:
- (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, except as provided in Subsection 63G-2-305(35);
  - (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 other than:
    - (i) a governmental entity;
    - (ii) a political subdivision;
    - (iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;
    - (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;
  - (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, 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.

*Amended by Chapter 373, 2014 General Session*

### **63G-2-302. 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:
    - (i) the Independent Legislative Ethics Commission, except for:
      - (A) the commission's summary data report that is required under legislative rule; and
      - (B) any other document that is classified as public under legislative rule; or
    - (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;
  - (e) records received by, or generated by or for, the Independent Executive Branch Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review of Executive Branch Ethics Complaints;
  - (f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:
    - (i) if, prior to the meeting, the chair of the committee determines release of the records:
      - (A) reasonably could be expected to interfere with the investigation undertaken by the committee; or
      - (B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and
    - (ii) after the meeting, if the meeting was closed to the public;
  - (g) 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;
  - (h) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;
  - (i) that part of a record indicating a person's social security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;
  - (j) that part of a voter registration record identifying a voter's:

- (i) driver license or identification card number;
- (ii) Social Security number, or last four digits of the Social Security number;
- (iii) email address; or
- (iv) date of birth;
- (k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);
- (l) a record that:
  - (i) contains information about an individual;
  - (ii) is voluntarily provided by the individual; and
  - (iii) goes into an electronic database that:
    - (A) is designated by and administered under the authority of the Chief Information Officer; and
    - (B) 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;
- (m) information provided to the Commissioner of Insurance under:
  - (i) Subsection 31A-23a-115(2)(a);
  - (ii) Subsection 31A-23a-302(3); or
  - (iii) Subsection 31A-26-210(3);
- (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);
- (p) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;
- (q) electronic toll collection customer account information received or collected under Section 72-6-118 and customer information described in Section 17B-2a-815 received or collected by a public transit district, including contact and payment information and customer travel data;
- (r) an email address provided by a military or overseas voter under Section 20A-16-501;
- (s) a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act;
- (t) records received by or generated by or for the Political Subdivisions Ethics Review Commission established in Section 11-49-201, except for:
  - (i) the commission's summary data report that is required in Section 11-49-202; and
  - (ii) any other document that is classified as public in accordance with Title 11, Chapter 49, Political Subdivisions Ethics Review Commission;
- (u) a record described in Subsection 53A-11a-203(3) that verifies that a parent was notified of an incident or threat; and
- (v) a criminal background check or credit history report conducted in accordance with Section 63A-3-201.
- (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, 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);
  - (b) records describing an individual's finances, except that the following are public:
    - (i) records described in Subsection 63G-2-301(2);
    - (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;
  - (f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 62A-3-102, 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; and
  - (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 the commission of an alleged crime;
    - (ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;
    - (iii) record any encounter that is the 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) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.
- (3)
- (a) As used in this Subsection (3), “medical records” means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.
  - (b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:
    - (i) in connection with any legal or administrative proceeding in which the patient’s physical, mental, or emotional condition is an element of any claim or defense; or
    - (ii) after a patient’s death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.
  - (c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

*Amended by Chapter 410, 2016 General Session*

**63G-2-303. Private information concerning certain government employees.**

- (1) As used in this section:
  - (a) “At-risk government employee” means a current or former:
    - (i) peace officer as specified in Section 53-13-102;
    - (ii) supreme court justice;
    - (iii) judge of an appellate, district, or juvenile court, or a court commissioner;
    - (iv) justice court judge;
    - (v) judge authorized by Title 39, Chapter 6, Utah Code of Military Justice;
    - (vi) federal judge;
    - (vii) federal magistrate judge;
    - (viii) judge authorized by Armed Forces, Title 10, United States Code;
    - (ix) United States Attorney;
    - (x) Assistant United States Attorney;
    - (xi) a prosecutor appointed pursuant to Armed Forces, Title 10, United States Code;

- (xii) a law enforcement official as defined in Section 53-5-711; or
  - (xiii) a prosecutor authorized by Title 39, Chapter 6, Utah Code of Military Justice.
  - (b) "Family member" means the spouse, child, sibling, parent, or grandparent of an at-risk government employee who is living with the employee.
- (2)
- (a) Pursuant to Subsection 63G-2-302(1)(h), an at-risk government employee may file a written application that:
    - (i) gives notice of the employee's status to each agency of a government entity holding a record or a part of a record that would disclose the employee's or the employee's family member's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions; and
    - (ii) requests that the government agency classify those records or parts of records private.
  - (b) An at-risk government employee desiring to file an application under this section may request assistance from the government agency to identify the individual records containing the private information specified in Subsection (2)(a)(i).
  - (c) Each government agency shall develop a form that:
    - (i) requires the at-risk government employee to provide evidence of qualifying employment;
    - (ii) requires the at-risk government employee to designate each specific record or part of a record containing the employee's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions that the applicant desires to be classified as private; and
    - (iii) affirmatively requests that the government entity holding those records classify them as private.
- (3) A county recorder, county treasurer, county auditor, or a county tax assessor may fully satisfy the requirements of this section by:
- (a) providing a method for the assessment roll and index and the tax roll and index that will block public access to the home address, home telephone number, situs address, and Social Security number; and
  - (b) providing the at-risk government employee requesting the classification with a disclaimer informing the employee that the employee may not receive official announcements affecting the employee's property, including notices about proposed annexations, incorporations, or zoning modifications.
- (4) A government agency holding records of an at-risk government employee classified as private under this section may release the record or part of the record if:
- (a) the employee or former employee gives written consent;
  - (b) a court orders release of the records; or
  - (c) the government agency receives a certified death certificate for the employee or former employee.
- (5)
- (a) If the government agency holding the private record receives a subpoena for the records, the government agency shall attempt to notify the at-risk government employee or former employee by mailing a copy of the subpoena to the employee's last-known mailing address together with a request that the employee either:
    - (i) authorize release of the record; or
    - (ii) within 10 days of the date that the copy and request are mailed, deliver to the government agency holding the private record a copy of a motion to quash filed with the court who issued the subpoena.
  - (b) The government agency shall comply with the subpoena if the government agency has:
    - (i) received permission from the at-risk government employee or former employee to comply with the subpoena;
    - (ii) not received a copy of a motion to quash within 10 days of the date that the copy of the subpoena was mailed; or

(iii) received a court order requiring release of the records.

*Amended by Chapter 426, 2013 General Session*

### **63G-2-304. 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.

*Renumbered and Amended by Chapter 382, 2008 General Session*

### **63G-2-305. Protected records.**

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

- (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;
- (2) commercial information or nonindividual 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;
  - (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and
  - (c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;
- (3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;
- (4) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);
- (5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;
- (6) 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, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties, a bid, proposal, application, or other information submitted to or by a governmental entity in response to:
  - (a) an invitation for bids;
  - (b) a request for proposals;
  - (c) a request for quotes;
  - (d) a grant; or
  - (e) other similar document;
- (7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:
  - (a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

- (b)
  - (i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and
  - (ii) at least two years have passed after the day on which the request for information is issued;
- (8) 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 unless:
  - (a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;
  - (b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;
  - (c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;
  - (d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or
  - (e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;
- (9) 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, unless:
  - (a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or
  - (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;
- (10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:
  - (a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;
  - (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;
  - (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;
  - (d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or
  - (e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;
- (11) records the disclosure of which would jeopardize the life or safety of an individual;
- (12) 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;
- (13) 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;
- (14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons

- and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;
- (15) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;
- (16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;
- (17) records that are subject to the attorney client privilege;
- (18) 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;
- (19)
- (a)
    - (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and
    - (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and
  - (b)
    - (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:
      - (A) members of a legislative body;
      - (B) a member of a legislative body and a member of the legislative body's staff; or
      - (C) members of a legislative body's staff; and
    - (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;
- (20)
- (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and
  - (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;
- (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:
  - (a) collective bargaining; or
  - (b) imminent or pending litigation;
- (24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental 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 that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;
- (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 defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;
- (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 except as provided in Section 52-4-206;
- (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 defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:
  - (a) the donor requests anonymity in writing;
  - (b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and
  - (c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;
- (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;
- (39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;
- (40)
  - (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:
    - (i) unpublished lecture notes;
    - (ii) unpublished notes, data, and information:
      - (A) relating to research; and
      - (B) of:
        - (I) the institution within the state system of higher education defined



- an anonymous complainant regarding a child care program or residential child care;
- (51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:
- (a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and
  - (b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:
    - (i) the nature of the law, ordinance, rule, or order; and
    - (ii) the individual complying with the law, ordinance, rule, or order;
- (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 that is:
- (a) conducted within the state system of higher education, as defined in Section 53B-1-102; and
  - (b) conducted using animals;
- (53) an initial proposal under Title 63N, Chapter 13, Part 2, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;
- (54) in accordance with Section 78A-12-203, 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, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;
- (56) records contained in the Management Information System created in Section 62A-4a-1003;
- (57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;
- (58) information requested by and provided to the 911 Division under Section 63H-7a-302;
- (59) in accordance with Section 73-10-33:
- (a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or
  - (b) an outline of an emergency response plan in possession of the state or a county or municipality;
- (60) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:
- (a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;
  - (b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;
  - (c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;
  - (d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or
  - (e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;
- (61) 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;
- (62) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsection 58-68-304(3) or (4);
- (63) a record described in Section 63G-12-210;
- (64) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003; and
- (65) any record in the custody of the Utah Office for Victims of Crime relating to a victim, including:
- (a) a victim's application or request for benefits;
  - (b) a victim's receipt or denial of benefits; and
  - (c) any administrative notes or records made or created for the purpose of, or used to, evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund.

*Amended by Chapter 147, 2015 General Session*

*Amended by Chapter 283, 2015 General Session*

*Amended by Chapter 411, 2015 General Session*

**63G-2-306. Procedure to determine classification.**

- (1) If more than one provision of this chapter could govern the classification of a record, the governmental entity shall classify the record by considering the nature of the interests intended to be protected and the specificity of the competing provisions.
- (2) Nothing in Subsection 63G-2-302(2), Section 63G-2-304, or 63G-2-305 requires a governmental entity to classify a record as private, controlled, or protected.

*Renumbered and Amended by Chapter 382, 2008 General Session*

**63G-2-307. Duty to evaluate records and make designations and classifications.**

- (1) A governmental entity shall:
  - (a) evaluate all record series that it uses or creates;
  - (b) designate those record series as provided by this chapter and Title 63A, Chapter 12, Public Records Management Act; and
  - (c) report the designations of its record series to the state archives.
- (2) A governmental entity may classify a particular record, record series, or information within a record at any time, but is not required to classify a particular record, record series, or information until access to the record is requested.
- (3) A governmental entity may redesignate a record series or reclassify a record or record series, or information within a record at any time.

*Renumbered and Amended by Chapter 382, 2008 General Session*

**63G-2-308. Segregation of records.**

Notwithstanding any other provision in this chapter, if a governmental entity receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect under this chapter, and, if the information the requester is entitled to inspect is intelligible, the governmental entity:

- (1) shall allow access to information in the record that the requester is entitled to inspect under this chapter; and
- (2) may deny access to information in the record if the information is exempt from disclosure to the requester, issuing a notice of denial as provided in Section 63G-2-205.

*Renumbered and Amended by Chapter 382, 2008 General Session*

**63G-2-309. Confidentiality claims.**

(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.

(ii) Any of the following who provides to an institution within the state system of higher education defined in Section 53B-1-102 a record that the person or governmental entity believes should be protected under Subsection 63G-2-305(40)(a)(ii) or (vi) or both Subsections 63G-2-305(40)(a)(ii) and (vi) shall provide the institution within the state system of higher education a written claim of business confidentiality in accordance with Section 53B-16-304:

(A) a person;

(B) a federal governmental entity;

(C) a state governmental entity; or

(D) a local governmental entity.

(b) A person or governmental entity who complies with this Subsection (1) shall be notified by the governmental entity to whom the request for a record is made if:

(i) a record claimed to be protected under one of the following is classified public:

(A) Subsection 63G-2-305(1);

(B) Subsection 63G-2-305(2);

(C) Subsection 63G-2-305(40)(a)(ii);

(D) Subsection 63G-2-305(40)(a)(vi); or

(E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D); or

(ii) the governmental entity to whom the request for a record is made determines that the record claimed to be protected under a provision listed in Subsection (1)(b)(i) should be released after balancing interests under Subsection 63G-2-201(5)(b) or 63G-2-401(6).

(2) Except as provided by court order, the governmental entity to whom the request for a record is made may not disclose a record claimed to be protected under a provision listed in Subsection (1)(b)(i) but which the governmental entity or records committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal. This Subsection (2) does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the records committee.

(3) Disclosure or acquisition of information under this chapter does not constitute misappropriation under Subsection 13-24-2(2).

*Amended by Chapter 445, 2013 General Session*

**63G-2-310. Records made public after 75 years.**

(1) The classification of a record is not permanent and a record that was not classified public under this act shall become a public record when the justification for the original or any subsequent restrictive classification no longer exists. A record shall be presumed to be public 75 years after its creation, except that a record that contains information about an individual 21 years old or younger at the time of the record's creation shall be presumed to be public 100 years after its creation.

(2) Subsection (1) does not apply to records of unclaimed property held by the state treasurer in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

*Renumbered and Amended by Chapter 382, 2008 General Session*

**63G-2-400.5. Definitions.**

As used in this part:

- (1) "Access denial" means a governmental entity's denial, under Subsection 63G-2-204(8) or Section 63G-2-205, in whole or in part, of a record request.
- (2) "Appellate affirmation" means a decision of a chief administrative officer, local appeals board, or records committee affirming an access denial.
- (3) "Interested party" means a person, other than a requester, who is aggrieved by an access denial or an appellate affirmation, whether or not the person participated in proceedings leading to the access denial or appellate affirmation.
- (4) "Local appeals board" means an appeals board established by a political subdivision under Subsection 63G-2-701(5)(c).
- (5) "Record request" means a request for a record under Section 63G-2-204.
- (6) "Records committee appellant" means:
  - (a) a political subdivision that seeks to appeal a decision of a local appeals board to the records committee; or
  - (b) a requester or interested party who seeks to appeal to the records committee a decision affirming an access denial.
- (7) "Requester" means a person who submits a record request to a governmental entity.

*Enacted by Chapter 335, 2015 General Session*

## Part 4. Appeals

### 63G-2-401. Appeal to chief administrative officer -- Notice of the decision of the appeal.

- (1)
  - (a) A requester or interested party may appeal an access denial to the chief administrative officer of the governmental entity by filing a notice of appeal with the chief administrative officer within 30 days after:
    - (i) the governmental entity sends a notice of denial under Section 63G-2-205, if the governmental entity denies a record request under Subsection 63G-2-205(1); or
    - (ii) the record request is considered denied under Subsection 63G-2-204(8), if that subsection applies.
  - (b) If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63G-2-204(3), and, if the requester believes the extraordinary circumstances do not exist or that the date specified is unreasonable, the requester may appeal the governmental entity's claim of extraordinary circumstances or date for compliance to the chief administrative officer by filing a notice of appeal with the chief administrative officer within 30 days after notification of a claim of extraordinary circumstances by the governmental entity, despite the lack of a "determination" or its equivalent under Subsection 63G-2-204(8).
- (2) A notice of appeal shall contain:
  - (a) the name, mailing address, and daytime telephone number of the requester or interested party; and
  - (b) the relief sought.
- (3) The requester or interested party may file a short statement of facts, reasons, and legal authority in support of the appeal.
- (4)
  - (a) If the appeal involves a record that is the subject of a business confidentiality claim under Section 63G-2-309, the chief administrative officer shall:
    - (i) send notice of the appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible; and
    - (ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester or interested party within three business days after receiving notice of the appeal.
  - (b) The business confidentiality claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality.
- (5)
  - (a) The chief administrative officer shall make a decision on the appeal within:
    - (i) five business days after the chief administrative officer's receipt of the notice of appeal; or
    - (ii) 12 business days after the governmental entity sends the notice of appeal to a person who submitted a claim of business confidentiality.
  - (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.
    - (ii) If the chief administrative officer fails to make a decision on an appeal under Subsection (1)(b) within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the claim of extraordinary circumstances or the reasonableness of the date specified when the records will be available.

- (c) The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.
- (6) Except as provided in Section 63G-2-406, the chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if the interests favoring access are greater than or equal to the interests favoring restriction of access.
- (7)
- (a) The governmental entity shall send written notice of the chief administrative officer's decision to all participants.
- (b) If the chief administrative officer's decision is to affirm the access denial in whole or in part, the notice under Subsection (7)(a) shall include:
- (i) a statement that the requester or interested party has the right to appeal the decision, as provided in Section 63G-2-402, to:
- (A) the records committee or district court; or
- (B) the local appeals board, if the governmental entity is a political subdivision and the governmental entity has established a local appeals board;
- (ii) the time limits for filing an appeal; and
- (iii) the name and business address of:
- (A) the executive secretary of the records committee; and
- (B) the individual designated as the contact individual for the appeals board, if the governmental entity is a political subdivision that has established an appeals board under Subsection 63G-2-701(5)(c).
- (8) A person aggrieved by a governmental entity's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the decision on the appeal shall be made within 30 days after receiving the notice of appeal.
- (9) The duties of the chief administrative officer under this section may be delegated.

*Amended by Chapter 335, 2015 General Session*

**63G-2-402. Appealing a decision of a chief administrative officer.**

- (1) If the decision of the chief administrative officer of a governmental entity under Section 63G-2-401 is to affirm the denial of a record request, the requester may:
- (a)
- (i) appeal the decision to the records committee, as provided in Section 63G-2-403; or
- (ii) petition for judicial review of the decision in district court, as provided in Section 63G-2-404; or
- (b) appeal the decision to the local appeals board if:
- (i) the decision is of a chief administrative officer of a governmental entity that is a political subdivision; and
- (ii) the political subdivision has established a local appeals board.
- (2) A requester who appeals a chief administrative officer's decision to the records committee or a local appeals board does not lose or waive the right to seek judicial review of the decision of the records committee or local appeals board.
- (3) As provided in Section 63G-2-403, an interested party may appeal to the records committee a chief administrative officer's decision under Section 63G-2-401 affirming an access denial.

*Amended by Chapter 335, 2015 General Session*

**63G-2-403. Appeals to the records committee.**

- (1)
  - (a) A records committee appellant appeals to the records committee by filing a notice of appeal with the executive secretary of the records committee no later than 30 days after the date of issuance of the decision being appealed.
  - (b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the executive secretary of the records committee no later than 45 days after the day on which the record request is made if:
    - (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and
    - (ii) the chief administrative officer fails to make a decision under Section 63G-2-401.
- (2) The notice of appeal shall:
  - (a) contain the name, mailing address, and daytime telephone number of the records committee appellant;
  - (b) be accompanied by a copy of the decision being appealed; and
  - (c) state the relief sought.
- (3) The records committee appellant:
  - (a) shall, on the day on which the notice of appeal is filed with the records committee, serve a copy of the notice of appeal on:
    - (i) the governmental entity whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party; or
    - (ii) the requester or interested party who is a party to the local appeals board proceeding that resulted in the decision that the political subdivision is appealing to the records committee, if the records committee appellant is a political subdivision; and
  - (b) may file a short statement of facts, reasons, and legal authority in support of the appeal.
- (4)
  - (a) Except as provided in Subsections (4)(b) and (c), no later than seven business days after receiving a notice of appeal, the executive secretary of the records committee shall:
    - (i) schedule a hearing for the records committee to discuss the appeal at the next regularly scheduled committee meeting falling at least 16 days after the date the notice of appeal is filed but no longer than 64 calendar days after the date the notice of appeal was filed except that the records committee may schedule an expedited hearing upon application of the records committee appellant and good cause shown;
    - (ii) send a copy of the notice of hearing to the records committee appellant; and
    - (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:
      - (A) each member of the records committee;
      - (B) the records officer and the chief administrative officer of the governmental entity whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party;
      - (C) any person who made a business confidentiality claim under Section 63G-2-309 for a record that is the subject of the appeal; and
      - (D) all persons who participated in the proceedings before the governmental entity's chief administrative officer, if the appeal is of the chief administrative officer's decision affirming an access denial.
  - (b)
    - (i) The executive secretary of the records committee may decline to schedule a hearing if the record series that is the subject of the appeal has been found by the committee in a previous hearing involving the same governmental entity to be appropriately classified as private, controlled, or protected.
    - (ii)
      - (A) If the executive secretary of the records committee declines to schedule a hearing, the executive secretary of the records committee shall send a

notice to the records committee appellant indicating that the request for hearing has been denied and the reason for the denial.

(B) The committee shall make rules to implement this section as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

- (c) The executive secretary of the records committee may schedule a hearing on an appeal to the records committee at a regularly scheduled records committee meeting that is later than the period described in Subsection (4)(a)(i) if that records committee meeting is the first regularly scheduled records committee meeting at which there are fewer than 10 appeals scheduled to be heard.
- (5)
- (a) No later than five business days before the hearing, a governmental entity shall submit to the executive secretary of the records committee a written statement of facts, reasons, and legal authority in support of the governmental entity's position.
- (b) The governmental entity shall send a copy of the written statement by first class mail, postage prepaid, to the requester or interested party involved in the appeal. The executive secretary shall forward a copy of the written statement to each member of the records committee.
- (6)
- (a) No later than 10 business days after the notice of appeal is sent by the executive secretary, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the records committee.
- (b) Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention.
- (c) The person seeking intervention shall provide copies of the statement described in Subsection (6)(b) to all parties to the proceedings before the records committee.
- (7) The records committee shall hold a hearing within the period of time described in Subsection (4).
- (8) At the hearing, the records committee shall allow the parties to testify, present evidence, and comment on the issues. The records committee may allow other interested persons to comment on the issues.
- (9)
- (a)
- (i) The records committee:
- (A) may review the disputed records; and
- (B) shall review the disputed records, if the committee is weighing the various interests under Subsection (11).
- (ii) A review of the disputed records under Subsection (9)(a)(i) shall be in camera.
- (b) Members of the records committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by this chapter.
- (10)
- (a) Discovery is prohibited, but the records committee may issue subpoenas or other orders to compel production of necessary evidence.
- (b) When the subject of a records committee subpoena disobeys or fails to comply with the subpoena, the records committee may file a motion for an order to compel obedience to the subpoena with the district court.
- (c)
- (i) The records committee's review shall be de novo, if the appeal is an appeal from a decision of a chief administrative officer:
- (A) issued under Section 63G-2-401; or
- (B) issued by a chief administrative officer of a political subdivision that has not established a local appeals board.
- (ii) For an appeal from a decision of a local appeals board, the records committee shall review and consider the decision of the local appeals board.
- (11)
- (a) No later than seven business days after the hearing, the records committee shall issue a

signed order:

- (i) granting the relief sought, in whole or in part; or
  - (ii) upholding the governmental entity's access denial, in whole or in part.
- (b) Except as provided in Section 63G-2-406, the records committee may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access is greater than or equal to the interest favoring restriction of access.
- (c) In making a determination under Subsection (11)(b), the records committee shall consider and, where appropriate, limit the requester's or interested party's use and further disclosure of the record in order to protect:
  - (i) privacy interests in the case of a private or controlled record;
  - (ii) business confidentiality interests in the case of a record protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and
  - (iii) privacy interests or the public interest in the case of other protected records.
- (12) The order of the records committee shall include:
  - (a) a statement of reasons for the decision, including citations to this chapter, court rule or order, another state statute, federal statute, or federal regulation that governs disclosure of the record, if the citations do not disclose private, controlled, or protected information;
  - (b) a description of the record or portions of the record to which access was ordered or denied, if the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);
  - (c) a statement that any party to the proceeding before the records committee may appeal the records committee's decision to district court; and
  - (d) a brief summary of the appeals process, the time limits for filing an appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.
- (13) If the records committee fails to issue a decision within 73 calendar days of the filing of the notice of appeal, that failure is the equivalent of an order denying the appeal. A records committee appellant shall notify the records committee in writing if the records committee appellant considers the appeal denied.
- (14) A party to a proceeding before the records committee may seek judicial review in district court of a records committee order by filing a petition for review of the records committee order as provided in Section 63G-2-404.
- (15)
  - (a) Unless a notice of intent to appeal is filed under Subsection (15)(b), each party to the proceeding shall comply with the order of the records committee.
  - (b) If a party disagrees with the order of the records committee, that party may file a notice of intent to appeal the order of the records committee.
  - (c) If the records committee orders the governmental entity to produce a record and no appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a record, the governmental entity shall:
    - (i) produce the record; and
    - (ii) file a notice of compliance with the records committee.
  - (d)
    - (i) If the governmental entity that is ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the records committee may do either or both of the following:
      - (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or
      - (B) send written notice of the governmental entity's noncompliance to:
        - (I) the governor for executive branch entities;
        - (II) the Legislative Management Committee for legislative branch entities; and

- (III) the Judicial Council for judicial branch agencies entities.
- (ii) In imposing a civil penalty, the records committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional.

*Amended by Chapter 335, 2015 General Session*

**63G-2-404. Judicial review.**

- (1)
- (a) A petition for judicial review of an order or decision, as allowed under this part or in Subsection 63G-2-701(6)(a)(ii), shall be filed no later than 30 days after the date of the order or decision.
  - (b) The records committee is a necessary party to a petition for judicial review of a records committee order.
  - (c) The executive secretary of the records committee shall be served with notice of a petition for judicial review of a records committee order, in accordance with the Utah Rules of Civil Procedure.
- (2) A petition for judicial review is a complaint governed by the Utah Rules of Civil Procedure and shall contain:
- (a) the petitioner's name and mailing address;
  - (b) a copy of the records committee order from which the appeal is taken, if the petitioner is seeking judicial review of an order of the records committee;
  - (c) the name and mailing address of the governmental entity that issued the initial determination with a copy of that determination;
  - (d) a request for relief specifying the type and extent of relief requested; and
  - (e) a statement of the reasons why the petitioner is entitled to relief.
- (3) If the appeal is based on the denial of access to a protected record based on a claim of business confidentiality, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.
- (4) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.
- (5) The district court may review the disputed records. The review shall be in camera.
- (6) The court shall:
- (a) make its decision de novo, but, for a petition seeking judicial review of a records committee order, allow introduction of evidence presented to the records committee;
  - (b) determine all questions of fact and law without a jury; and
  - (c) decide the issue at the earliest practical opportunity.
- (7)
- (a) Except as provided in Section 63G-2-406, the court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the interest favoring access is greater than or equal to the interest favoring restriction of access.
  - (b) The court shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63G-2-305(1) and (2), and privacy interests or the public interest in the case of other protected records.

*Amended by Chapter 335, 2015 General Session*

**63G-2-405. Confidential treatment of records for which no exemption applies.**

- (1) A court may, on appeal or in a declaratory or other action, order the confidential treatment of

- records for which no exemption from disclosure applies if:
- (a) there are compelling interests favoring restriction of access to the record; and
  - (b) the interests favoring restriction of access clearly are greater than or equal to the interests favoring access.
- (2) If a governmental entity requests a court to restrict access to a record under this section, the court shall require the governmental entity to pay the reasonable attorney fees incurred by the lead party in opposing the governmental entity's request, if:
- (a) the court finds that no statutory or constitutional exemption from disclosure could reasonably apply to the record in question; and
  - (b) the court denies confidential treatment under this section.
- (3) This section does not apply to records that are specifically required to be public under statutory provisions outside of this chapter or under Section 63G-2-301, except as provided in Subsection (4).
- (4)
- (a) Access to drafts and empirical data in drafts may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interests that relate to the underlying information, and not to the deliberative nature of the record.
  - (b) Access to original data in a computer program may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interests that relate to the underlying information, and not to the status of that data as part of a computer program.

*Amended by Chapter 377, 2012 General Session*

**63G-2-406. Evidentiary standards for release of certain enforcement and litigation records.**

- (1) A record that is classified as protected under Subsection 63G-2-305(10), (17), (18), (23), (24), or (33) may be ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404(8)(a) only if the person or party seeking disclosure of the record has established, by a preponderance of the evidence, that the public interest favoring access is equal to or greater than the interest favoring restriction of access.
- (2) A record that is classified as protected under Subsection 63G-2-305(11) may be ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404(8) only if the person or party seeking disclosure of the record has established, by clear and convincing evidence, that the public interest favoring access is equal to or greater than the interest favoring restriction of access.

*Amended by Chapter 445, 2013 General Session*

## Part 5. State Records Committee

### 63G-2-501. State Records Committee created -- Membership -- Terms -- Vacancies -- Expenses.

- (1) There is created the State Records Committee within the Department of Administrative Services to consist of the following seven individuals:
  - (a) an individual in the private sector whose profession requires the individual to create or manage records that if created by a governmental entity would be private or controlled;
  - (b) the director of the Division of State History or the director's designee;
  - (c) the governor or the governor's designee;
  - (d) two citizen members;
  - (e) one person representing political subdivisions, as recommended by the Utah League of Cities and Towns; and
  - (f) one individual representing the news media.
- (2) The members specified in Subsections (1)(a), (d), (e), and (f) shall be appointed by the governor with the consent of the Senate.
- (3)
  - (a) Except as required by Subsection (3)(b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.
  - (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.
  - (c) Each appointed member is eligible for reappointment for one additional term.
- (4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

*Amended by Chapter 335, 2015 General Session*

### 63G-2-502. State Records Committee -- Duties.

- (1) The records committee shall:
  - (a) meet at least once every three months;
  - (b) review and approve schedules for the retention and disposal of records;
  - (c) hear appeals from determinations of access as provided by Section 63G-2-403;
  - (d) determine disputes submitted by the state auditor under Subsection 67-3-1(15)(d); and
  - (e) appoint a chairman from among its members.
- (2) The records committee may:
  - (a) make rules to govern its own proceedings as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
  - (b) by order, after notice and hearing, reassign classification and designation for any record series by a governmental entity if the governmental entity's classification or designation is inconsistent with this chapter.
- (3) The records committee shall annually appoint an executive secretary to the records committee. The executive secretary may not serve as a voting member of the committee.
- (4) Five members of the records committee are a quorum for the transaction of business.
- (5) The state archives shall provide staff and support services for the records committee.
- (6) If the records committee reassigns the classification or designation of a record or record series under Subsection (2)(b), any affected governmental entity or any other interested person may

appeal the reclassification or redesignation to the district court. The district court shall hear the matter de novo.

- (7) The Office of the Attorney General shall provide counsel to the records committee and shall review proposed retention schedules.

*Amended by Chapter 174, 2015 General Session*

## Part 6. Collection of Information and Accuracy of Records

### 63G-2-601. Rights of individuals on whom data is maintained -- Classification statement -- Notice to provider of information.

- (1)
  - (a) Each governmental entity shall file with the state archivist a statement explaining the purposes for which a record series that is designated as private or controlled is collected and used by that governmental entity.
  - (b) The statement filed under Subsection (1)(a) is a public record.
- (2)
  - (a) A governmental entity shall provide notice of the following to a person that is asked to furnish information that could be classified as a private or controlled record:
    - (i) the reasons the person is asked to furnish the information;
    - (ii) the intended uses of the information;
    - (iii) the consequences for refusing to provide the information; and
    - (iv) the classes of persons and the governmental entities that currently:
      - (A) share the information with the governmental entity; or
      - (B) receive the information from the governmental entity on a regular or contractual basis.
  - (b) The notice shall be:
    - (i) posted in a prominent place at all locations where the governmental entity collects the information; or
    - (ii) included as part of the documents or forms that are used by the governmental entity to collect the information.
- (3) Upon request, each governmental entity shall explain to a person:
  - (a) the reasons the person is asked to furnish information that could be classified as a private or controlled record;
  - (b) the intended uses of the information referred to in Subsection (3)(a);
  - (c) the consequences for refusing to provide the information referred to in Subsection (3)(a); and
  - (d) the reasons and circumstances under which the information referred to in Subsection (3)(a) may be shared with or provided to other persons or governmental entities.
- (4) A governmental entity may use private or controlled records only for those purposes:
  - (a) given in the statement filed with the state archivist under Subsection (1); or
  - (b) for which another governmental entity may use the record under Section 63G-2-206.

*Renumbered and Amended by Chapter 382, 2008 General Session*

### 63G-2-602. Disclosure to subject of records -- Context of use.

When providing records under Subsection 63G-2-202(1) or when providing public records about an individual to the persons specified in Subsection 63G-2-202(1), a governmental entity shall, upon request, disclose the context in which the record is used.

*Renumbered and Amended by Chapter 382, 2008 General Session*

### 63G-2-603. Requests to amend a record -- Appeals.

- (1) Proceedings of state agencies under this section shall be governed by Title 63G, Chapter 4, Administrative Procedures Act.
- (2)
  - (a) Subject to Subsection (8), an individual may contest the accuracy or completeness of any public, or private, or protected record concerning him by requesting the governmental

- entity to amend the record. However, this section does not affect the right of access to private or protected records.
- (b) The request shall contain the following information:
    - (i) the requester's name, mailing address, and daytime telephone number; and
    - (ii) a brief statement explaining why the governmental entity should amend the record.
  - (3) The governmental entity shall issue an order either approving or denying the request to amend as provided in Title 63G, Chapter 4, Administrative Procedures Act, or, if the act does not apply, no later than 30 days after receipt of the request.
  - (4) If the governmental entity approves the request, it shall correct all of its records that contain the same incorrect information as soon as practical. A governmental entity may not disclose the record until it has amended it.
  - (5) If the governmental entity denies the request, it shall:
    - (a) inform the requester in writing; and
    - (b) provide a brief statement giving its reasons for denying the request.
  - (6)
    - (a) If a governmental entity denies a request to amend a record, the requester may submit a written statement contesting the information in the record.
    - (b) The governmental entity shall:
      - (i) file the requester's statement with the disputed record if the record is in a form such that the statement can accompany the record or make the statement accessible if the record is not in a form such that the statement can accompany the record; and
      - (ii) disclose the requester's statement along with the information in the record whenever the governmental entity discloses the disputed information.
  - (7) The requester may appeal the denial of the request to amend a record pursuant to the Administrative Procedures Act or, if that act does not apply, to district court.
  - (8) This section does not apply to records relating to title to real or personal property, medical records, judicial case files, or any other records that the governmental entity determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

*Renumbered and Amended by Chapter 382, 2008 General Session*

#### **63G-2-604. Retention and disposition of records.**

- (1)
  - (a) Except for a governmental entity that is permitted to maintain its own retention schedules under Part 7, Applicability to Political Subdivisions, the Judiciary, and the Legislature, each governmental entity shall file with the State Records Committee a proposed schedule for the retention and disposition of each type of material that is defined as a record under this chapter.
  - (b) After a retention schedule is reviewed and approved by the State Records Committee under Subsection 63G-2-502(1)(b), the governmental entity shall maintain and destroy records in accordance with the retention schedule.
  - (c) If a governmental entity subject to the provisions of this section has not received an approved retention schedule for a specific type of material that is classified as a record under this chapter, the model retention schedule maintained by the state archivist shall govern the retention and destruction of that type of material.
- (2) A retention schedule that is filed with or approved by the State Records Committee under the requirements of this section is a public record.

*Renumbered and Amended by Chapter 382, 2008 General Session*

## Part 7. Applicability to Political Subdivisions, the Judiciary, and the Legislature

### 63G-2-701. Political subdivisions may adopt ordinances in compliance with chapter -- Appeal process.

- (1) As used in this section:
  - (a) "Access denial" means the same as that term is defined in Section 63G-2-400.5.
  - (b) "Interested party" means the same as that term is defined in Section 63G-2-400.5.
  - (c) "Requester" means the same as that term is defined in Section 63G-2-400.5.
- (2)
  - (a) Each political subdivision may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention, and amendment of records.
  - (b) The ordinance or policy shall comply with the criteria set forth in this section.
  - (c) If any political subdivision does not adopt and maintain an ordinance or policy, then that political subdivision is subject to this chapter.
  - (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision is subject to Part 1, General Provisions, Part 3, Classification, and Sections 63A-12-105, 63A-12-107, 63G-2-201, 63G-2-202, 63G-2-205, 63G-2-206, 63G-2-601, and 63G-2-602.
  - (e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed with the state archives no later than 30 days after its effective date.
  - (f) The political subdivision shall also report to the state archives all retention schedules, and all designations and classifications applied to record series maintained by the political subdivision.
  - (g) The report required by Subsection (2)(f) is notification to state archives of the political subdivision's retention schedules, designations, and classifications. The report is not subject to approval by state archives. If state archives determines that a different retention schedule is needed for state purposes, state archives shall notify the political subdivision of the state's retention schedule for the records and shall maintain the records if requested to do so under Subsection 63A-12-105(2).
- (3) Each ordinance or policy relating to information practices shall:
  - (a) provide standards for the classification and designation of the records of the political subdivision as public, private, controlled, or protected in accordance with Part 3, Classification;
  - (b) require the classification of the records of the political subdivision in accordance with those standards;
  - (c) provide guidelines for establishment of fees in accordance with Section 63G-2-203; and
  - (d) provide standards for the management and retention of the records of the political subdivision comparable to Section 63A-12-103.
- (4)
  - (a) Each ordinance or policy shall establish access criteria, procedures, and response times for requests to inspect, obtain, or amend records of the political subdivision, and time limits for appeals consistent with this chapter.
  - (b) In establishing response times for access requests and time limits for appeals, the political subdivision may establish reasonable time frames different than those set out in Section 63G-2-204 and Part 4, Appeals, if it determines that the resources of the political subdivision are insufficient to meet the requirements of those sections.
- (5)
  - (a) A political subdivision shall establish an appeals process for persons aggrieved by classification, designation, or access decisions.
  - (b) A political subdivision's appeals process shall include a process for a requester or interested party to appeal an access denial to a person designated by the political subdivision as the chief administrative officer for purposes of an appeal under Section 63G-2-401.

- (c)
  - (i) A political subdivision may establish an appeals board to decide an appeal of a decision of the chief administrative officer affirming an access denial.
  - (ii) An appeals board established by a political subdivision shall be composed of three members:
    - (A) one of whom shall be an employee of the political subdivision; and
    - (B) two of whom shall be members of the public, at least one of whom shall have professional experience with requesting or managing records.
  - (iii) If a political subdivision establishes an appeals board, any appeal of a decision of a chief administrative officer shall be made to the appeals board.
  - (iv) If a political subdivision does not establish an appeals board, the political subdivision's appeals process shall provide for an appeal of a chief administrative officer's decision to the records committee, as provided in Section 63G-2-403.
- (6)
  - (a) A political subdivision or requester may appeal an appeals board decision:
    - (i) to the records committee, as provided in Section 63G-2-403; or
    - (ii) by filing a petition for judicial review with the district court.
  - (b) The contents of a petition for judicial review under Subsection (6)(a)(ii) and the conduct of the proceeding shall be in accordance with Sections 63G-2-402 and 63G-2-404.
  - (c) A person who appeals an appeals board decision to the records committee does not lose or waive the right to seek judicial review of the decision of the records committee.
- (7) Any political subdivision that adopts an ordinance or policy under Subsection (1) shall forward to state archives a copy and summary description of the ordinance or policy.

*Amended by Chapter 335, 2015 General Session*

#### **63G-2-702. Applicability to the judiciary.**

- (1) The judiciary is subject to the provisions of this chapter except as provided in this section.
- (2)
  - (a) The judiciary is not subject to Part 4, Appeals, except as provided in Subsection (5).
  - (b) The judiciary is not subject to Part 5, State Records Committee, and Part 6, Collection of Information and Accuracy of Records.
  - (c) The judiciary is subject to only the following sections in Part 9, Public Associations: Sections 63A-12-105 and 63A-12-106.
- (3) The Judicial Council, the Administrative Office of the Courts, the courts, and other administrative units in the judicial branch shall designate and classify their records in accordance with Sections 63G-2-301 through 63G-2-305.
- (4) Substantially consistent with the provisions of this chapter, the Judicial Council shall:
  - (a) make rules governing requests for access, fees, classification, designation, segregation, management, retention, denials and appeals of requests for access and retention, and amendment of judicial records;
  - (b) establish an appellate board to handle appeals from denials of requests for access and provide that a requester who is denied access by the appellate board may file a lawsuit in district court; and
  - (c) provide standards for the management and retention of judicial records substantially consistent with Section 63A-12-103.
- (5) Rules governing appeals from denials of requests for access shall substantially comply with the time limits provided in Section 63G-2-204 and Part 4, Appeals.
- (6) Upon request, the state archivist shall:
  - (a) assist with and advise concerning the establishment of a records management program in the judicial branch; and
  - (b) as required by the judiciary, provide program services similar to those available to the executive and legislative branches of government as provided in this chapter and Title

63A, Chapter 12, Public Records Management Act.

*Amended by Chapter 369, 2012 General Session*

**63G-2-703. Applicability to the Legislature.**

- (1) The Legislature and its staff offices shall designate and classify records in accordance with Sections 63G-2-301 through 63G-2-305 as public, private, controlled, or protected.
- (2)
  - (a) The Legislature and its staff offices are not subject to Section 63G-2-203 or to Part 4, Appeals, Part 5, State Records Committee, or Part 6, Collection of Information and Accuracy of Records.
  - (b) The Legislature is subject to only the following sections in Title 63A, Chapter 12, Public Records Management Act: Sections 63A-12-102 and 63A-12-106.
- (3) The Legislature, through the Legislative Management Committee:
  - (a) shall establish policies to handle requests for classification, designation, fees, access, denials, segregation, appeals, management, retention, and amendment of records; and
  - (b) may establish an appellate board to hear appeals from denials of access.
- (4) Policies shall include reasonable times for responding to access requests consistent with the provisions of Part 2, Access to Records, fees, and reasonable time limits for appeals.
- (5) Upon request, the state archivist shall:
  - (a) assist with and advise concerning the establishment of a records management program in the Legislature; and
  - (b) as required by the Legislature, provide program services similar to those available to the executive branch of government, as provided in this chapter and Title 63A, Chapter 12, Public Records Management Act.

*Amended by Chapter 258, 2015 General Session*

## Part 8. Remedies

### 63G-2-801. Criminal penalties.

- (1)
  - (a) A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses, provides a copy of, or improperly uses a private, controlled, or protected record knowing that the disclosure or use is prohibited under this chapter, is, except as provided in Subsection 53-5-708(1)(c), guilty of a class B misdemeanor.
  - (b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released private, controlled, or protected information in the reasonable belief that the use or disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.
  - (c) It is a defense to prosecution under Subsection (1)(a) that the record could have lawfully been released to the recipient if it had been properly classified.
  - (d) It is a defense to prosecution under Subsection (1)(a) that the public employee or other person disclosed, provided, or used the record based on a good faith belief that the disclosure, provision, or use was in accordance with the law.
- (2)
  - (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any private, controlled, or protected record to which the person is not legally entitled is guilty of a class B misdemeanor.
  - (b) No person shall be guilty under Subsection (2)(a) who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.
- (3)
  - (a) A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by law, is guilty of a class B misdemeanor.
  - (b) It is a defense to prosecution under Subsection (3)(a) that the public employee's failure to release the record was based on a good faith belief that the public employee was acting in accordance with the requirements of law.
  - (c) A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by a final unappealed order from a government entity, the records committee, or a court is guilty of a class B misdemeanor.

*Amended by Chapter 298, 2013 General Session*

### 63G-2-802. Injunction -- Attorney fees.

- (1) A district court in this state may enjoin any governmental entity or political subdivision that violates or proposes to violate the provisions of this chapter.
- (2)
  - (a) A district court may assess against any governmental entity or political subdivision reasonable attorney fees and other litigation costs reasonably incurred in connection with a judicial appeal of a denial of a records request if the requester substantially prevails.
  - (b) In determining whether to award attorneys' fees under this section, the court shall consider:
    - (i) the public benefit derived from the case;
    - (ii) the nature of the requester's interest in the records; and
    - (iii) whether the governmental entity's or political subdivision's actions had a reasonable basis.
  - (c) Attorney fees shall not ordinarily be awarded if the purpose of the litigation is primarily to benefit the requester's financial or commercial interest.

- (3) Neither attorney fees nor costs shall be awarded for fees or costs incurred during administrative proceedings.
- (4) Notwithstanding Subsection (2), a court may only award fees and costs incurred in connection with appeals to district courts under Subsection 63G-2-404(2) if the fees and costs were incurred 20 or more days after the requester provided to the governmental entity or political subdivision a statement of position that adequately explains the basis for the requester's position.
- (5) Claims for attorney fees as provided in this section or for damages are subject to Title 63G, Chapter 7, Governmental Immunity Act of Utah.

*Renumbered and Amended by Chapter 382, 2008 General Session*

**~~63G-2-803. No individual liability for certain decisions of a governmental entity.~~**

- (1) Neither the governmental entity, nor any officer or employee of the governmental entity, is liable for damages resulting from the release of a record where the person or government requesting the record presented evidence of authority to obtain the record even if it is subsequently determined that the requester had no authority.
- (2) Neither the governmental entity, nor any officer or employee of the governmental entity, is liable for damages arising from the negligent disclosure of records classified as private under Subsection 63G-2-302(1)(g) unless:
  - (a) the disclosure was of employment records maintained by the governmental entity; or
  - (b) the current or former government employee had previously filed the notice required by Section 63G-2-303 and:
    - (i) the government entity did not take reasonable steps to preclude access or distribution of the record; or
    - (ii) the release of the record was otherwise willfully or grossly negligent.
- (3) A mailing from a government agency to an individual who has filed an application under Section 63G-2-303 is not a wrongful disclosure under this chapter or under Title 63A, Chapter 12, Public Records Management Act.

*Amended by Chapter 426, 2013 General Session*

**63G-2-804. Violation of provision of chapter -- Penalties for intentional mutilation or destruction -- Disciplinary action.**

A governmental entity may take disciplinary action which may include suspension or discharge against any employee of the governmental entity who intentionally violates any provision of this chapter or Subsection 63A-12-105(3).

*Amended by Chapter 44, 2009 General Session*

## Part 9. Public Associations

### 63G-2-901. Definitions -- Public associations subject to act.

- (1) As used in this section:
  - (a) "Public association" means any association, organization, or society whose members include elected or appointed public officials and for which public funds are used or paid to the public association for membership dues or for other support for the official's participation in the public association.
  - (b)
    - (i) "Public funds" means any money received by a public entity from appropriations, taxes, fees, interest, or other returns on investment.
    - (ii) "Public funds" does not include money donated to a public entity by a person or entity.
- (2) The budget documents and financial statements of a public association shall be released pursuant to a written request if 50% or more of the public association's:
  - (a) members are elected or appointed public officials from this state; and
  - (b) membership dues or other financial support come from public funds from this state.

*Renumbered and Amended by Chapter 382, 2008 General Session*

UTAH DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF ARCHIVES & RECORDS SERVICE

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## STATE RECORDS COMMITTEE APPEAL DECISION 2014-04

### BEFORE THE STATE RECORDS COMMITTEE OF THE STATE OF UTAH

**JESSICA PHILLIPS, Petitioner, vs.**

**WEST JORDAN POLICE DEPARTMENT, Respondent.**

### DECISION AND ORDER

#### Case No. 14 - 04

By this appeal, Petitioner, Jessica Phillips (“Ms. Phillips”), seeks access to records from Respondent, West Jordan Police Department (“Department”), pursuant to Utah’s Government Records Access and Management Act (“GRAMA”).

#### FACTS

By letter dated November 11, 2013 the Petitioner, by and through her attorney, submitted a GRAMA request to the Records Custodian of the West Jordan Police Department requesting “a copy of any video and audio recording from Officer D. Saunders’s patrol vehicle dashboard or any other camera and any video and/or audio recordings from any other officer who responded to the scene” of the petitioner’s DUI arrest on October 12, 2013. Additionally, the following records were also requested - “any audio and video of the room in which the intoxilyzer was administered or any other room, e.g. the booking area, in which the [Petitioner] was held.”

The Petitioner, by and through her attorney, had previously requested on October 16, 2013 these very same records through the rules of criminal discovery in the matter of West Jordan City v. Jessica Phillips, in the West Jordan Justice Court, Case No. 135307985.

On November 14, 2013 the West Jordan Police informed the Petitioner, “At this time, the case is still active. Any and all information received at this time must be done through our attorney’s office via discovery”. By letter dated November 19, 2013, Robert Thorup, Deputy City Attorney for the City of West Jordan, additionally informed the Petitioner that “We are declining to respond to your Government Records Access and Management Act request because it seeks production of records relevant to litigation in which the City and the requestor’s client are parties. The requested records are properly sought by means of the discovery provisions of the Utah Rule of Criminal Procedure.”

On or about December 2, 2013 Petitioner appealed this matter to the City Manager of the City of West Jordan.

On December 5, 2013 the City Manager determined the appeal was moot, stating that the City Manager was “informed that the requested audio and video records were sought by [Petitioner] through discovery filed pursuant to the Utah Rules of Criminal Procedure, and that the audio and video records that exist have been sent to [Petitioner] by the City Prosecutor in response to said discovery requests. Therefore I find the appeal under GRAMA to be moot, and it is therefore denied.”

On December 10, 2013 the West Jordan City Prosecutor sent the audio/video records to the Petitioner’s attorney pursuant to the criminal discovery process.

Petitioner now appeals the denial of the GRAMA request to the State Records Committee (the “Committee”). The Committee having reviewed the submissions of the parties and having heard oral argument of the parties on March 19, 2014, now issues the following Decision and Order.

#### STATEMENT OF REASONS FOR DECISION

1. The Government Records Access and Management Act (“GRAMA”) specifies that “all records are public unless otherwise expressly provided by statute”. Utah Code §63G-2-201(2).
2. GRAMA further provides that “[t]he disclosure of records to which access is governed or limited pursuant to court rule....is governed by the specific provisions of that....rule....” Utah Code Ann. §63G-2-

201(6)(a). GRAMA applies to records which are governed by a court rule insofar as GRAMA is not inconsistent with the court rule. Utah Code Ann. §63G-2-201(6)(b)

3. GRAMA addresses discovery in the courts at Utah Code Ann. §63G-2-207 stating that “Subpoenas and other methods of discovery under the state .....rules of ....criminal procedure are not written requests under Section 63G-2-204.” And at §63G-2-207(c)(1) “Unless a court or administrative law judge imposes limitations in a restrictive order, this section does not limit the right to obtain records through procedures set forth in [GRAMA].”

4. While the Petitioner did eventually receive the requested records through the criminal discovery process, the matter is not moot for determination by the Committee since the obligation of the Committee is to address the appeal of denial of public records in this matter. The Committee concludes the requested records are public under Utah Code 63G-2-301(3)(g) and not classified by the City of West Jordan as other than public and should have been provided through the GRAMA process. In general, the right to access public government records is not lost, and may not be impaired, when a citizen is involved in litigation with a governmental entity that maintains those records.

#### **ORDER**

THEREFORE, IT IS ORDERED THAT the appeal of the Petitioner, Jessica Phillips, is GRANTED and the City shall provide the Petitioner with a copy of the records pursuant to the GRAMA request.

#### **RIGHT TO APPEAL**

Either party may appeal this Decision and Order to the District Court. The petition for review must be filed no later than thirty (30) days after the date of this order. The petition for judicial review must be a complaint. The complaint and the appeals process are governed by the Utah Rules of Civil Procedure and Utah Code § 63G-2-404. The court is required to make its decision de novo. In order to protect its rights on appeal, a party may wish to seek advice from an attorney.<sup>1</sup>

#### **PENALTY NOTICE**

Pursuant to Utah Code § 63G-2-403(14)(d), the government entity herein shall comply with the order of the Committee and , if records are ordered to be produced, file (1) a notice of compliance with the records committee upon production of the records; or (2) a notice of intent to appeal. If the government entity fails to file a notice of compliance or a notice of intent to appeal, the Committee may do either or both of the following: (1) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or (2) send written notice of the entity’s noncompliance to the Governor for executive branch entities, to the Legislative Management Committee for legislative branch entities, and to the Judicial Council for judicial branch agencies’ entities.

Entered this 28th day of March, 2014  
BY THE STATE RECORDS COMMITTEE

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LEX HEMPHILL, Chairperson  
State Records Committee

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## STATE RECORDS COMMITTEE APPEAL 2013-12

### BEFORE THE STATE RECORDS COMMITTEE OF THE STATE OF UTAH

**COLLEEN SCHULTE, Petitioner, vs.**

**SUMMIT COUNTY ATTORNEY'S OFFICE, Respondent.**

### DECISION AND ORDER

#### Case No. 13-12

By this appeal, Petitioner, Colleen Schulte, seeks access to records of communications between Dean Schulte and Respondent, the Summit County Attorney's Office.

#### FACTS

On May 3, 2013, Petitioner filed a request pursuant to the Utah Government Records Access and Management Act ("GRAMA") with Respondent. In her request, she generally asked for records showing all communications between the Summit County Attorney's Office and Dean Schulte regarding a pending criminal case. In a letter dated May 8, 2013, Deputy Summit County Attorney, Helen E. Strachan, denied Petitioner's records request. Ms. Strachan stated that the request was being denied because "this is a pending criminal matter and all requests need to be made through the discovery process." Ms. Strachan further stated that this decision should be considered the final decision of the chief administrative officer of the Summit County Attorney's Office.

Petitioner now appeals Respondent's denial of her records request to the State Records Committee ("Committee"). The Committee having reviewed the arguments submitted by the parties and having heard oral argument and testimony on October 10, 2013, and having reviewed the disputed records in camera, now issues the following Decision and Order.

#### STATEMENT OF REASONS FOR DECISION

1. The Government Records Access and Management Act ("GRAMA") specifies that "all records are public unless otherwise expressly provided by statute." Utah Code § 63G-2-201(2). Records that are not public are designated as either "private," "protected," or "controlled." See, Utah Code §§ 63G-2-302, -303, -304 and -305.
2. 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, may be classified as protected records by a governmental entity pursuant to Utah Code § 63G-2-305(18).
3. Matthew D. Bates, Prosecuting Attorney with Respondent, represented to the Committee that the disputed records involve communications between Respondent and Mr. Schulte in an active criminal investigation and prosecution by Respondent. Mr. Bates argued that Utah Code § 63G-2-305(18) provides a clear protection to communications between a prosecutor and a person who is giving information to the prosecution as part of an investigation for a criminal case. Mr. Bates added that a defendant who is the subject of a criminal prosecution might be able to have access to these types of records by filing a discovery motion with the trial judge.
4. After reviewing the arguments submitted by the parties, hearing oral arguments and testimony, and reviewing the disputed records in camera, the Committee finds that the requested records of communications between the Summit County Attorney's Office and Dean Schulte were prepared either for an attorney, or by an attorney, in anticipation of a criminal litigation proceeding. Accordingly, they were properly classified as protected records by Respondent pursuant to Utah Code § 63G-2-305(18).

#### ORDER

THEREFORE, IT IS ORDERED THAT the appeal of Petitioner, Colleen Schulte is DENIED.

#### RIGHT TO APPEAL

Either party may appeal this Decision and Order to the District Court. The petition for review must be filed no later than thirty (30) days after the date of this order. The petition for judicial review must be a complaint. The complaint and the appeals process are governed by the Utah Rules of Civil Procedure and Utah Code § 63G-2-404. The court is required to make its decision de novo. In order to protect its rights on appeal, a party may wish to seek advice from an attorney.

### **PENALTY NOTICE**

Pursuant to Utah Code § 63G-2-403(14)(d), the government entity herein shall comply with the order of the Committee and, if records are ordered to be produced, file: (1) a notice of compliance with the records committee upon production of the records; or (2) a notice of intent to appeal. If the government entity fails to file a notice of compliance or a notice of intent to appeal, the Committee may do either or both of the following: (1) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or (2) send written notice of the entity's noncompliance to the Governor for executive branch entities, to the Legislative Management Committee for legislative branch entities, and to the Judicial Council for judicial branch agencies' entities.

Entered this 22nd day of October 2013,  
BY THE STATE RECORDS COMMITTEE

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LEX HEMPHILL, Chairperson  
State Records Committee

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(2004)

PATRICIA ANN DIMMITT, Plaintiff,  
v.  
UTAH TRANSIT AUTHORITY, Defendant.

Case No: 2:03 CV 1016 TC.

United States District Court, D. Utah.

July 8, 2004.

## ORDER GRANTING MOTION TO COMPEL

DAVID NUFFER, Magistrate Judge (Part-time).

This case was referred to the undersigned under 28 U.S.C. §636(b)(1)(A). The undersigned was directed to hear and determine any nondispositive pretrial matters pending before the Court. Plaintiff has filed a motion to compel<sup>[1]</sup> discovery, which is vigorously contested by Defendant.<sup>[2]</sup>

Plaintiff, a female, alleges that Defendant terminated her in retaliation for her exercise of rights protected under the Civil Rights Act of 1964.<sup>[3]</sup> Plaintiff claims she complained about disparate treatment of male and female UTA employees,<sup>[4]</sup> and was thereafter terminated for the stated reason of poor performance,<sup>[5]</sup> though this was pretextual.<sup>[6]</sup> Plaintiff claims she was told her performance was "superior"<sup>[7]</sup> and was never told, before her termination, that her performance was inadequate.<sup>[8]</sup>

One specific incident mentioned in the complaint is that Plaintiff informed a supervisor that another employee, Chris Shane, was doing personal work on UTA time for a supervisor, Carole Verschoor.<sup>[9]</sup> Plaintiff also recounts that she was assisted by another UTA employee, Jeanetta Williams, when Plaintiff complained to UTA's Civil Rights Department about disparate treatment on May 30, 2002. The disparate treatment complaint referred to preferences given Shane and another UTA employee, Kris McBride, both of whom are male.

The dispute focuses on Plaintiff's desire for certain files:

- a. UTA Civil Rights Department files on Plaintiff, Jeanetta Williams, Chris Shane, Kris McBride and Carole Verschoor; and
- b. UTA's personnel and Human Resources files on Chris Shane, Kris McBride and Carole Verschoor.

and for a complete audiotape and complete transcript of a management meeting July 10, 2004, at which Plaintiff's grievances were discussed, two days before she was terminated.<sup>[10]</sup>

UTA claims that Plaintiff narrowed her discovery requests to the files "relating to the so-called 'complaint' made by Mrs. Dimmitt to Toby Allres on May 30, 2002."<sup>[11]</sup> This was the recited "understanding" of UTA's counsel, supposedly based on Plaintiff's letter of April 14, 2004. That letter actually stated Plaintiff is "interested in files which were created as a result of, or which pertain to, the complaint made by Patty Dimmitt and Jeanetta Williams to Toby Allres."<sup>[12]</sup> UTA's Memorandum did not quote the italicized portion of the preceding quotation. UTA's Memorandum also does not quote the next sentence of the April 14, 2004, letter which goes on to ask, "Did I correctly understand you to say that no such files exist ...? .... UTA contends that Ms. Dimmitt did not make a complaint of discrimination. These files would either substantiate or undermine such an assertion." UTA's counsel's "understanding" obviously ignores these portions of Plaintiff's counsel's letter. There was no agreement that the discovery requests were narrowed as UTA states.

UTA alleges that the files sought are not relevant,<sup>[13]</sup> pointing out that Plaintiff claims she was terminated in *retaliation for complaining* of disparate treatment, and that her complaint does not allege actual disparate treatment. Thus, UTA argues, the comparable or disparate treatment of Shane and McBride is not "relevant to a claim or defense of a party."<sup>[14]</sup>

Whether Shane and McBride were treated differently is not relevant to Ms. Dimmitt's retaliatory discharge claim.<sup>[15]</sup>

This statement *may* be true in terms of ultimate *admissibility*, but the allegations of different treatment, the fact of different treatment and the records and reports of different treatment are *relevant* to Plaintiff's claim that UTA terminated her in retaliation for protected activities. "UTA's treatment of Mr. Shane and Mr. McBride ... is quire 'relevant' to Mrs. Dimmitt's ... reasonable good faith belief that she was complaining about conduct that violated Title VII."<sup>118</sup>

UTA has provided the transcript and audiotape of that portion of the July 10th meeting dealing with Plaintiff's grievances<sup>117</sup> and claims the balance of the meeting minutes and tape are not relevant. UTA claims the right to make this judgment without disclosing the full context of the materials to Plaintiff or Plaintiff's counsel. When a portion of a document or statement is in evidence, the entirety may be introduced if fairness requires it.<sup>118</sup> This is a hollow right if the parties do not have equal access to entire documents and statements. The entirety of the tape and transcript should be available in discovery, subject to protections appropriate to such sensitive matters.

## GRAMA Privilege

UTA objected<sup>119</sup> that many materials sought by Plaintiff are privileged under the Utah Government Records Access and Management Act (**GRAMA**).<sup>120</sup> UTA does not devote any argument, beyond one sentence, to this assertion.<sup>121</sup> Plaintiff claims that the **GRAMA** objection is not effective in a federal court proceeding<sup>122</sup> and cites a case holding that state records acts do not limit the federal courts.<sup>123</sup> Defendant did not argue the point. However, it does seem appropriate to impose conditions to prevent untoward dissemination of these materials.

The court finds the position of UTA was substantially justified in that "reasonable people could differ" on these issues.<sup>124</sup> Expenses of this motion will not be awarded.

## ORDER

IT IS HEREBY ORDERED that the motion to compel<sup>125</sup> is GRANTED.

IT IS FURTHER ORDERED that defendant UTA shall produce for inspection and copying:

- a. UTA Civil Rights Department files on Plaintiff, Jeanetta Williams, Chris Shane, Kris McBride and Carole Verschoor;
- b. UTA's personnel and Human Resources files on Chris Shane, Kris McBride and Carole Verschoor; and
- c. a complete audiotape and complete transcript of the management meeting held July 10, 2004.

IT IS FURTHER ORDERED until the parties stipulate to a different form of protective order, Plaintiff and counsel are ordered not to disseminate the foregoing materials and shall hold such information in confidence, shall use the information only for purposes of this civil action and for no other action, and shall not use it for any business or other commercial purpose, and shall not disclose it to any other person, other than as reasonably required for purposes of this civil action. At the conclusion of this action, including through all appeals, any person receiving such records shall destroy or return to the Defendant all such records received and certify to the other party such destruction or return. Such return or destruction shall not relieve any person from any of the continuing obligations imposed upon by this order. If a person receiving such records is subpoenaed in another action or proceeding or served with a document or testimony demand or a court order, and such subpoena or demand or court order seeks information subject to this order, that party shall give prompt written notice to opposing counsel and allow opposing counsel an opportunity to oppose such subpoena or demand or court order prior to the deadline for complying with the subpoena or demand or court order. No compulsory disclosure to third parties of information subject to this order shall be deemed a waiver of any claim of confidentiality, except as expressly found by a court or judicial authority of competent jurisdiction. The court's jurisdiction to enforce this order will continue after the termination of this action.

Within 10 days after being served with a copy of the magistrate judge's order, a party may serve and file objections to the order; a party may not thereafter assign as error a defect in the magistrate judge's order to which objection was not timely made. The district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law.<sup>126</sup>

- [1] Plaintiff's Motion for Order to Compel (Motion to Compel), docket no. 14, filed May 26, 2004.
- [2] Defendant Utah Transit Authority's Memorandum in Opposition to Plaintiff's Motion for Order to Compel (UTA Memorandum), docket no. 20, filed June 18, 2004.
- [3] Complaint, docket no. 1, filed November 19, 2003, ¶¶ 3, 30.
- [4] *Id.* ¶¶ 11-14; 27-28.
- [5] *Id.* ¶ 21.
- [6] *Id.* ¶¶ 23, 29.
- [7] *Id.* ¶ 7.
- [8] *Id.* ¶¶ 8, 22.
- [9] *Id.* ¶¶ 16, 17.
- [10] Memorandum in Support of Plaintiffs' Motion for an Order to Compel, docket no. 15, filed May 26, 2004, at 2-3.
- [11] UTA Memorandum at 8, quoting letter from UTA's counsel to Plaintiff's counsel, April 27, 2004, attached as Exhibit H to the affidavit of Brett Johnson, attached to UTA's Memorandum as Exhibit 1.
- [12] Letter from Plaintiff's counsel to UTA's counsel, April 14, 2004, attached as Exhibit F to the affidavit of Brett Johnson, attached to UTA Memorandum as Exhibit 1.
- [13] UTA Memorandum at 11-13.
- [14] Fed. R. Civ. P. 26(b).
- [15] UTA Memorandum at 12.
- [16] Reply Memorandum in Support of Plaintiff's Motion for Order to Compel, docket no. 21, filed June 28, 2004, at 4.
- [17] UTA Memorandum at 5, ¶¶ 7, 8 and 10. The partial transcript of the meeting was not produced until after the Motion to Compel was filed.
- [18] When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.
- Fed. R. Evid. 106.
- [19] UTA Memorandum ¶ 3 at 4.
- [20] Utah Code Ann. § 63-2-101 *et. seq.*
- [21] UTA Memorandum at 13.
- [22] Plaintiff's Memorandum at 4-5.
- [23] *Park v. City of Chicago*, 297 F.3d 606, 612 (7th Cir. 2003).
- [24] *Pierce v. Underwood*, 487 U.S. 552, 565 (1988).
- [25] Plaintiff's Motion for Order to Compel (Motion to Compel), docket no. 14, filed May 26, 2004.
- [26] Fed. R. Civ. P. Rule 72(a).



**Ralph Chamness**  
Chief Deputy  
Civil Division

**SIM GILL**  
DISTRICT ATTORNEY

**Jeffrey William Hall**  
Chief Deputy  
Justice Division

**Lisa Ashman**  
Administrative  
Operations

**Blake Nakamura**  
Chief Deputy  
Justice Division

June 12, 2015

**BY E-MAIL (MIKEG@SLTRIB.COM)**

Mike Gorrell  
The Salt Lake Tribune  
90 South 400 West, Suite 700  
Salt Lake City, Utah 84101

**Re: GRAMA requests dated May 28-29, 2015**

Dear Mike:

Thank you for agreeing to give the Salt Lake County (“County”) additional time to respond to your three requests for records under the Utah Government Records Access and Management Act, Utah Code Ann. § 63G-2-101, et seq., dated May 28-29, 2015. As detailed below, some (but not all) responsive, non-protected, and non-privileged records have been copied to a CD-ROM, which I can either mail to you or make available at our front desk for you to pick up at your convenience. The remaining records are voluminous and are still under review, *see* Utah Code Ann. § 63G-2-204(5)(c), (6)(c), but they will be made available as soon as possible.

1. **Request to Contracts & Procurement [Ex. 1]:**

In connection with your first request dated May 28, 2015, i.e., for “all contracts between Exoro Group and Salt Lake County since 2005, including selection committee documents such as scoring sheets and associated documents, [as well as] bid information on the bids Exoro attempted to get but did not,” all responsive records in the County’s possession have been copied to the CD-ROM. Please note, however, that Contracts & Procurement does not maintain records for the entire period covered by your request. In that regard, and for your reference, I have copied to the same CD-ROM the relevant document retention schedule. A total of 480 pages are produced in connection with this request.

2. Request for Disclosure of Business Interest Statements [Ex. 2]:

In connection with your second request, submitted by e-mail on May 29, 2015, which asked for “the conflict of interest statements signed by Ben McAdams, Nichole Dunn and Justin Miller,” which you later confirmed meant all “Disclosure of Business Interest” statements for those three individuals, all responsive records have been copied to the CD-ROM. A total of 64 pages are produced in connection with this request.

3. Request to Salt Lake County Mayor’s Office [Ex. 3]:

In connection with your third request dated May 28, 2015, which contained numerous sub-parts and was amended by you in a telephone conversation and later e-mail exchange with me on May 29, 2015 [Ex. 2], the County is still working to provide a complete response. We have nonetheless been able to collect, review, redact, and prepare for production (copied to the same CD-ROM) the following records:

A. All of Justin Miller’s emails with Ben McAdams or Nichole Dunn that involve Exoro Group, Donald Dunn, Maura Carabello, or Andrew Roberts.

The County has produced all relevant records from Justin Miller’s County e-mail account as it existed, and was preserved, beginning on approximately October 16, 2014 (the date of Mr. Miller’s termination of employment). Please note that we do not necessarily have access to e-mail messages deleted by Mr. Miller prior to that date, nor do we have access to any of his personal e-mail accounts. A total of 146 pages are produced in connection with this subpart of your third request.

B. All of Justin Miller’s e-mails with The Exoro Group, Donald Dunn, Maura Carabello, or Andrew Roberts.

The County has produced all relevant records from Mr. Miller’s County e-mail account for the entire period requested. Please see paragraph 3(A) above for additional information.

C. E-mails involving Exoro from/to Ben McAdams or Nichole Dunn from 2013 to the present.

i. Mayor McAdams

The County has produced all relevant records from Mayor McAdams’ County e-mail account for the entire period requested. Please note that, because we received the relevant data from County Information Systems in numerous Outlook .pst files sorted by date, the Mayor’s total e-mail production is similarly produced in numerous files arranged by date. We manually searched each Outlook .pst file for all relevant records.

The total number of pages produced from the Mayor's County e-mail account is 1,646 pages. An additional 76 pages of e-mails that we determined were likely "record[s]" within the meaning of Utah Code Annotated section 63G-2-103(22) were collected and produced by the Mayor from his personal e-mail account.

ii. Deputy Mayor Dunn

Given the length of time Deputy Mayor Dunn has been with the County, as well as her daily volume of e-mail messages, the size of her County e-mail account is so vast that the manual review procedures we utilized for Mayor McAdams were unworkable. For example, an Outlook .pst file for the Deputy Mayor covering just a portion of her relevant time with the County was almost 6 GB.

To reduce that volume to a workable amount, we asked County Information Systems to run a query against the server for the following search terms for the period January 1, 2013, to June 1, 2015: Justin, Miller, Exoro, ORD2425 (and ORD 2425), Maura, Carabello, Dina, Blaes, and Donald. Based on that query, we received one Outlook .pst file (comprising 4.3GB) and manually searched that file for responsive records.

The County has produced all relevant records from Deputy Mayor Dunn's County e-mail account for the calendar year 2015. The total number of pages produced from Deputy Mayor Dunn's County e-mail account for calendar year 2015 is 1,947 pages. An additional 45 pages of e-mails that we determined were likely "record[s]" within the meaning of Utah Code Annotated section 63G-2-103(22) were collected and produced by the Deputy Mayor from her personal e-mail account.

Deputy Mayor Dunn's total e-mails are voluminous and thus, despite our diligent efforts, her e-mails for calendar years 2014 and 2013 are still under review. See Utah Code Ann. § 63G-2-204(5)(c), (6)(c). We are endeavoring to review, redact, and prepare those records for a supplemental production as soon as possible, and hopefully by no later than next Friday, June 19, 2015. We will keep you updated if we determine that supplemental production date is not possible.

D. All e-mails between Ben McAdams and Donald Dunn from January 1, 2013, to the present.

The County has produced all relevant records from Mayor McAdams' County e-mail account for the entire period requested. Please see paragraph 3(C)(i) above for additional information.



4. Documents and information withheld

Please note that the produced documents exclude items that are not “records” within the meaning of Utah Code Annotated section 63G-2-103(22). Purely personal communications, for example, were not produced. *See* Utah Code Ann. § 63G-2-103(22)(b)(i)(A)-(B). That said, where, for example, a printed e-mail string contained both e-mails that were likely “records” and e-mails (or comments within e-mails) that were “personal communications” excluded from GRAMA, *id.*, we generally attempted to err on the side of disclosure by producing the entire string but redacting the non-record “personal communication.”

We also redacted as necessary to remove personal identifiers, as required by Salt Lake County ordinance 2.81, or to protect the privacy interests of private individuals, Utah Code Ann. § 63G-2-302(2)(d). We also withheld records or redacted as necessary to remove protected information concerning on-going real estate matters, *see id.* at § 63G-2-305(8)-(9), and attorney client privileged communications or attorney work product, *id.* at § 63G-2-305(17)-(18). Last, we withheld several documents that were in draft form only. *Id.* at § 63G-2-103(22)(b)(ii).

5. Right to appeal and follow-up questions

You have the right to appeal this determination to the Salt Lake County Council. Appeals must be made in accordance with Salt Lake County Policy 2040, a copy of which is attached [Ex. 4]. That said, if you believe I have missed something, or that I have improperly withheld, in whole or in part, what you believe is a “record,” please feel free to just telephone me; given the volume of data, mistakes are possible, and those can be rectified outside the formal GRAMA appeal process.

Also, as I mentioned on the telephone last week, once you have reviewed the produced records, please feel free to contact me with any questions or concerns you may have. Although we are somewhat limited given Mr. Miller’s threatened litigation against the County, we can likely arrange for you to speak with whatever individuals in the County you believe would be helpful.

If you have any questions, please do not hesitate to contact me at [dgoddard@slco.org](mailto:dgoddard@slco.org) or 385.468.7761.

Best regards,

/s

Darcy M. Goddard  
Deputy District Attorney

Enclosure (w/ hard copy only)

cc (by e-mail):

Matt Canham, Salt Lake Tribune (by e-mail, [mcanham@sltrib.com](mailto:mcanham@sltrib.com))  
Ben McAdams, Salt Lake County Mayor (by e-mail, [ben@slco.org](mailto:ben@slco.org))



# EXHIBIT 1



## GRAMA - Records Request Form

To: Contracts and Procurement 385-468-0320  
(Name of county agency/office holding the records and name of contact person if known)

Address of county agency: 2001 S. State, Salt Lake City

Description of records requested: (Be as specific as possible; type of records, subject, year or dates wanted, etc.)

All contracts between Exoro Group and Salt Lake County since 2005, including selection committee documents such as scoring sheets, AND associated documents. Also, bid information on bids Exoro attempted to get but didn't

Please note: state law does not require any agency to create any record to fulfill a request. GRAMA applies only to existing records.

In some cases, you may need to provide a Social Security Number or other personal identifier to retrieve records. In the case of a request for medical records, the agency may require you to complete a HIPAA release.

DO NOT include your Social Security Number on this form. The agency will provide a separate method for you to provide that number if it is needed.

Check all that are applicable:

- I would like to review/inspect the records.
- I would like to receive copies of the records. I understand that I will be responsible for copy costs. I authorize costs of up to \$\_\_\_\_\_ I understand that prepayment of copies over \$50.00 may be required and that I will be contacted if estimated costs are greater than the above specified amount.
- I would like to receive copies of the records and request a waiver of costs under UCA 63G-2-203(4). Supporting documentation is attached.

If the requested records are not Public, please explain why you believe you are entitled to access.

- I am the subject of the record. (Photo ID required)
- I am the person who submitted the record (Photo ID required)
- I am authorized to access the record by the subject of the record. (Consent for Release Form attached).
- Other. Please explain. \_\_\_\_\_
- I am requesting an expedited response as permitted by UCA 63G-2-204(3)(b). (Please attach information showing status as a member of the media and a statement that the records are required for a story for broadcast or publication, or other information demonstrating entitlement to an expedited response.)

Name of requester: Mike Borrell - The Salt Lake Tribune

Street Address: 90 S. 400 West Suite 700

City: Salt Lake City State: UT Zip Code: 84101

Daytime phone number where requestor can be reached: 801-257-8734

Email: mikeg@s1trib.com

Signature:  Date: 5/28/15

**Cathy Baker**

---

**From:** Mike Gorrell <mikeg@mail.SLTrib.com>  
**Sent:** Friday, May 29, 2015 10:04 AM  
**To:** Darcy Goddard  
**Subject:** Re: GRAMA request, J. Miller NOC

Hi Darcy,

In respect to your telephone call to me about 9:45 a.m., I would like to amend my GRAMA request in part to ask for Justin Miller's emails to and from Ben McAdams and Nichole Dunn that involve Exoro Group, Donald Dunn and/or Maura Carabello.

A second amendment, if I may.

Could I please get copies of the conflict of interest statements signed by Ben McAdams, Nichole Dunn and Justin Miller.

Hope my clarification simplifies your search and that my extra request is not burdensome. Thanks,

Mike

Mike Gorrell  
The Salt Lake Tribune  
mikeg@sltrib.com  
801-257-8734 (w)

----- Original Message -----

**From:** "Darcy Goddard"  
**Sent:** 5/28/2015 3:32:56 PM  
**To:** "Mike Gorrell"  
**Cc:** "Alyson Heyrend" , "Jason Yocom"  
**Subject:** RE: GRAMA request, J. Miller NOC

Dear Mike:

This one got forwarded to me, too. FWIW, my office is generally the contact for GRAMA requests where there is a threat of litigation, so please feel free to send these to me directly.

Unlike the e-mail request, I don't think we will have trouble responding to this in the expedited time frame you request. I will let you know if that changes.

Best regards,

Darcy M. Goddard

Deputy District Attorney

Salt Lake County District Attorney's Office

2001 S. State Street, Room S3-600

Salt Lake County, Utah 84190

Telephone: 385.468.7761

Facsimile: 385.468.7800

**PLEASE NOTE NEW ROOM NUMBER**

---

**From:** Mike Gorrell [mailto:mikeg@mail.SLTrib.com]  
**Sent:** Thursday, May 28, 2015 1:03 PM  
**To:** Darcy Goddard  
**Subject:** Re: GRAMA request, J. Miller NOC

Thanks for getting back to me, Darcy.

I presume that CD is easiest for you. If that's the case, I'll go that route.

Mike

Mike Gorrell  
The Salt Lake Tribune  
[mikeg@sltrib.com](mailto:mikeg@sltrib.com)  
801-257-8734 (w)

----- Original Message -----

**From:** "Darcy Goddard" <[DGoddard@slco.org](mailto:DGoddard@slco.org)>  
**Sent:** 5/28/2015 12:57:03 PM  
**To:** "'mikeg@sltrib.com'" <[mikeg@sltrib.com](mailto:mikeg@sltrib.com)>

Cc: "Alyson Heyrend" <AHeyrend@slco.org>  
Subject: GRAMA request, J. Miller NOC

Dear Mike:

Alyson forwarded your GRAMA request (copy attached) to my office for handling.

We will endeavor to collect, review, and produce the requested records within the expedited time frame you request, but please be advised that it may require more time given the volume of e-mails maintained by County IS for the Mayor and Deputy Mayor. We will keep you updated.

Please let me know at your convenience if you would like the records produced electronically by e-mail, on CD, or in hard copy. Regardless of format, I do not anticipate there being any charge.

Best regards,

Darcy M. Goddard

Deputy District Attorney

Salt Lake County District Attorney's Office

2001 S. State Street, Room S3-600

Salt Lake County, Utah 84190

Telephone: 385.468.7761

Facsimile: 385.468.7800

**PLEASE NOTE NEW ROOM NUMBER**

# EXHIBIT 3



## GRAMA - Records Request Form

To: Salt Lake County Mayor's office 385-468-7001  
(Name of county agency/office holding the records and name of contact person if known)

Address of county agency: 2001 S. State, 2nd Floor, Salt Lake City, UT

Description of records requested: (Be as specific as possible; type of records, subject, year or dates wanted, etc.)

- All of Justin Miller's emails <sup>with</sup> Ben McAdams, Nichole Dunn, Exoro Group, Maura Caraballo, Donald Dunn (2013 <sup>to present</sup>)

- Emails involving Exoro from/to Ben McAdams and Nichole Dunn 2013 ->  
- All emails between Ben McAdams and Donald Dunn 11/2013 to present

Please note: state law does not require any agency to create any record to fulfill a request. GRAMA applies only to existing records.

In some cases, you may need to provide a Social Security Number or other personal identifier to retrieve records. In the case of a request for medical records, the agency may require you to complete a HIPAA release.

DO NOT include your Social Security Number on this form. The agency will provide a separate method for you to provide that number if it is needed.

Check all that are applicable:

- I would like to review/inspect the records.
- I would like to receive copies of the records. I understand that I will be responsible for copy costs. I authorize costs of up to \$ \_\_\_\_\_, I understand that prepayment of copies over \$50.00 may be required and that I will be contacted if estimated costs are greater than the above specified amount.
- I would like to receive copies of the records and request a waiver of costs under UCA 63G-2-203(4). Supporting documentation is attached.

If the requested records are not Public, please explain why you believe you are entitled to access.

- I am the subject of the record. (Photo ID required)
- I am the person who submitted the record (Photo ID required)
- I am authorized to access the record by the subject of the record. (Consent for Release Form attached).
- Other. Please explain. \_\_\_\_\_
- I am requesting an expedited response as permitted by UCA 63G-2-204(3)(b). (Please attach information showing status as a member of the media and a statement that the records are required for a story for broadcast or publication, or other information demonstrating entitlement to an expedited response.)

Name of requester: Mike Borrell

Street Address: 90 S. 400 West Suite 700

City: Salt Lake City State: UT Zip Code: 84101

Daytime phone number where requestor can be reached: 801-257-8734

Email: mike.g@sltrib.com

Signature: \_\_\_\_\_ Date: 5/28/15

SALT LAKE COUNTY  
COUNTYWIDE POLICY  
ON  
GRAMA APPEALS PROCEDURE

**Reference --**

Government Records Access and Management Act (GRAMA), Utah Code Annotated, Sections 63-2-401 through 407 & 701(4-6)

Records Management, Salt Lake County Ordinance, Section 2.82.100

**Purpose --**

The appeals process provides members of the public with a process for petitioning Salt Lake County to reconsider records issues.

**1.0 Types of Appeals**

Members of the public may appeal a decision made by the County concerning:

- 1.1 records classifications
- 1.2 fees charged for records
- 1.3 an agency's response to a records request

**2.0 Appeals**

2.1 Agency Administrator

- 2.1.1 County agencies shall attempt to resolve public complaints concerning records requests informally and at the lowest possible administrative level.
- 2.1.2 If a requestor and a County agency cannot resolve a complaint at the agency level, the requestor may submit a written notice of appeal to the Salt Lake County Council by filing a notice of appeal to the Council. The notice of appeal shall state the basis of the appeal and the relief requested. The requestor shall file the notice of appeal within thirty (30) calendar days of receiving an adverse decision from a County agency.
- 2.1.3 A notice of appeal is considered filed when it is received and date-stamped at the County Council offices located at 2001 South State Street, N2200, Salt Lake City, Utah 84190. The County Council will not accept notices of appeal sent by facsimile, e-mail, or any other electronic submission.

## 2.2 County Council

2.2.1 Upon receiving an appeal notice of an agency decision, the County Council may forward the notice to the hearing officer or schedule a hearing before the Council and notify the relevant County agency.

### 2.2.2 Notice and Hearing Schedule

2.2.2.1 Within five (5) business days of receiving a notice of appeal, the County Council shall schedule a hearing no sooner than fourteen (14) calendar days after the notice of appeal is filed, but no longer than forty-five (45) calendar days after the notice of appeal is filed. The County Council may schedule an expedited hearing upon application of the petitioner and good cause shown. If the hearing is to be conducted and heard by a hearing officer the hearing shall be scheduled no later than thirty-five (35) calendar days after the notice of appeal is filed.

2.2.2.2 The Council Clerk shall send a copy of the hearing notice to the petitioner and to the relevant County agency. Notice shall also be posted consistent with the Open Meetings Act.

2.2.2.3 No later than ten (10) business days after the notice of hearing is sent, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the County Council.

2.2.2.4 The parties to an appeal, including any intervenors, may submit a written statement of facts, reasons, and legal authority to support their position at least ten (10) business days prior to the hearing date. The parties may not conduct formal discovery prior to a hearing under this section.

2.2.2.5 Any party who needs special accommodations shall notify the County Council of their needs at least five (5) business days prior to the hearing. Parties may appear telephonically upon application and good cause shown.

### 2.2.3 Hearing Officer

2.2.3.1 The Council may elect to appoint a hearing officer to conduct and hear appeals at the County Council level of appeal consistent with this policy. The hearing officer may make recommendations to the Council, who shall constitute the appeals board and who shall make all final decisions and orders under this policy. The hearing officer shall coordinate with Council staff to send out notices and distribute relevant documentation.

### 2.2.4 Hearing Procedure

2.2.4.1 At the hearing, the County Council or the hearing officer shall allow the parties to testify, present evidence, and comment on the issues. The hearing shall be guided by the legal rules of evidence. The parties

may question and cross examine witnesses and may be represented by legal counsel. The County Council or the hearing officer shall conduct the hearing in accordance with the Utah Open Meetings Act, except as necessary to prevent the disclosure of private, protected, or controlled information.

2.2.4.2 The County Council or the hearing officer may review disputed records, but may not reveal any private, protected, or controlled information during the course of the hearing. If the County Council finds it necessary to discuss private, protected, or controlled information during the course of a hearing, it may enter into closed session as a quasi-judicial body to avoid disclosure of that information.

2.2.4.3 The County Council may close the meeting to discuss its decision and order at the end of the hearing so long as it is acting as a quasi-judicial body.

2.2.4.4 The County Council may uphold, amend, or reverse an agency decision.

#### 2.2.5 Decision and Order

2.2.5.1 If the hearing is heard by the hearing officer, he or she has ten (10) calendar days to prepare and submit a recommendation to the County Council.

2.2.5.2 No later than ten (10) business days after the hearing or the receipt of the hearing officer's recommendation, the County Council shall, after holding a public hearing, issue a signed order upholding, amending, or reversing the agency decision. The County Council finds that it needs ten (10) business days instead of five (5) calendar days to issue an order to give part-time Council members sufficient time to review a decision and order before it is issued to the parties.

2.2.5.3 The County Council may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access outweighs the interest favoring restriction of access pursuant to Utah Code Annotated § 63-2-201(5)(b).

2.2.5.4 In making its decision, the County Council shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect: privacy interests in the case of a private or controlled record; business confidentiality interests in the case of a record protected under Utah Code Annotated 63-2-304(1), (2), (40)(a)(ii), or (40)(a)(vi); and privacy interests or the public interest in the case of other protected records.

2.2.5.5 The hearing officer's recommendation and the County Council's final order shall include:

2.2.5.5.1 A statement of reasons for the decision, including legal authority supporting the decision.

2.2.5.5.2 Where applicable, a description of the record or portions of the record to which access is ordered or denied, so long as the description does not reveal private, protected or controlled information.

2.2.5.5.3 A statement that any party to the proceeding may appeal the decision to district court.

2.2.5.5.4 A summary of the appeals process, the time limits for filing an appeal, and a notice that to protect its rights, a party may wish to seek advice from an attorney.

2.2.5.6 If the County Council fails to issue a final order within the stated time period, the petitioner's appeal shall be deemed denied. A party shall notify the County Council in writing, and consistent with subsection 2.1.3. of this policy, if it deems an appeal denied.

2.3 District Court

2.3.1 The parties may appeal any decision of the County Council to District Court consistent with the Act and the Utah Rules of Civil Procedure.

APPROVED and PASSED this 12 day of February, 2008.

SALT LAKE COUNTY COUNCIL

\_\_\_\_\_  
Michael Jensen, Chair

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Sherrie Swensen, County Clerk

\_\_\_\_\_  
District Attorney's Office      Date

Ralph Chamness  
Chief Deputy  
Civil Division



Jeffrey William Hall  
Chief Deputy  
Justice Division

Blake Nakamura  
Chief Deputy  
Justice Division

**DISTRICT ATTORNEY**  
SALT LAKE COUNTY  
**SIM GILL**

May 10, 2012

**BY FACSIMILE (801.532.5506) AND FIRST-CLASS MAIL**

Ms. Kymberly C. May  
Richards Brandt Miller Nelson  
299 S. Main Street, 15th Floor  
Salt Lake City, Utah 84111

**Re: Subpoena duces tecum dated March 9, 2012**

Dear Ms. May:

The enclosed documents comprising Pauline Henry's personnel file (as redacted to protect personal information as required by the Government Records Access and Management Act, Utah Code Ann. § 63G-2-101, et seq. ("GRAMA")) are produced in connection with the subpoena duces tecum dated March 9, 2012 ("Subpoena").

Although I have also been able to locate documents relating to workers' compensation claims, those documents are not discoverable under GRAMA. As such, I cannot produce them unless either (i) ordered to do so pursuant to a judge-issued subpoena, *see* Utah Code Ann. § 63G-2-202(7), -207, or (ii) Ms. Henry provides a signed release permitting their disclosure.

Salt Lake County objects to the Subpoena to the extent it calls for nebulous categories of documents such as "corporate medical records" (whatever those might be), "correspondence," and "insurance documents." Such documents, to the extent they exist, will not be produced.

This completes Salt Lake County's production in connection with the Subpoena. Please feel free to contact me if you have any questions. I can be reached at 801.468.3765 or [dgoddard@slco.org](mailto:dgoddard@slco.org).

Best regards,

  
Darcy M. Goddard  
Deputy District Attorney  
Litigation/Civil Division



Enclosures

2001 South State Street, S3700 • Salt Lake City, UT 84190-1210  
Telephone: Risk Management 801.468.3421 • Fax 801.468.3644 • [www.districtattorney@slco.org](http://www.districtattorney@slco.org)

cc (w encl.):

Mr. Darrin Davis  
Adams Davis, P.C.  
35 West Broadway, Suite 203  
Salt Lake City, Utah 84103



**NOTICE TO PERSONS SERVED WITH A SUBPOENA**

***Subpoena to Appear at Trial, at Hearing, or at Deposition***

1. If this subpoena commands you to appear to give testimony at trial or at hearing, you must appear in person at the place designated in the subpoena.
2. If this subpoena commands you to appear to give testimony at deposition, you must appear in person at the place designated in the subpoena. If you are a resident of Utah, the subpoena may command you to appear only in the county where you reside, or where you are employed, or where you transact business in person, or where the court orders you to appear. If you are not a resident of Utah, the subpoena may command you to appear only in the county where you are served with the subpoena, or where the court orders.
3. If this subpoena commands you to appear to give testimony at trial, at hearing, or at deposition, but does not command you to produce or to permit inspection and copying of documents or tangible things, or inspection of premises, you have the right to object if the subpoena:
  - (a) imposes an undue burden or expense upon you;
  - (b) does not allow you a reasonable time to comply, which may be less than 14 days, depending on the circumstances; or,
  - (c) commands you to appear at deposition at a place in violation of paragraph 2, above.
4. To object to complying with the subpoena, you must file with the court issuing the subpoena a motion to quash or modify the subpoena. You must comply with the subpoena unless you have obtained a court order granting you relief from the subpoena.

***Subpoena to Produce or to Permit Inspection of Documents or Tangible Things or to Permit Inspection of Premises***

5. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, but does not command you appear to give testimony at trial, at a hearing, or at a deposition:
  - (a) you need not appear in person at the place of production or inspection;
  - (b) you must produce documents as you keep them in the ordinary course of business or organize and label them to correspond with the categories demanded in the subpoena; and
  - (c) you need not make any copies or advance any costs for production, inspection or copying. If you agree to make copies, the party who has served the subpoena upon you must pay the reasonable costs of production and copying.
6. You have the right to object if the subpoena:
  - (a) imposes an undue burden or expense upon you;
  - (b) does not allow you at least 14 days to comply, unless the party serving the subpoena has obtained a court order requiring an earlier response;
  - (c) requires you to disclose a trade secret or other confidential research, development or commercial information;
  - (d) requires you to disclose privileged communication with your attorney or privileged trial preparation materials; or,
  - (e) requires you to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from expert's study made not at the request of any party.
7. To object to a subpoena for one of the reasons stated in paragraph 6, you must provide notice in writing of your objection to the party or attorney serving the subpoena for you to respond. If your objection is based on either paragraph 6(c), 6(d), or 6(e), your written objection must describe the nature of the documents, communications or things that you object to producing with sufficient specificity to enable the party or attorney serving the subpoena to contest your objection. You must also comply with the subpoena to the extent that it commands production or inspection of materials to which you do not object.
8. After you make timely written objection, the party who has served the subpoena upon you must obtain a court order to compel with the subpoena. The party must give you a copy of its motion for a court order and notice of any hearing before the court. You have the right to file a response to the motion with the court and a right to attend any hearing. After you make a timely written objection, you have no obligation to comply with the subpoena until the party serving the subpoena has served you with a court order that compels you to comply.
9. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, and to appear to give testimony at trial, at a hearing, or at a deposition, you may object to the production or inspection of documents or tangible things, or inspection of premises, by following the procedure identified in paragraph 7. Even though you object to production or inspection of premises, you must appear in person at the trial, at the hearing or at the deposition unless you obtain an order of the court by following the procedures identified in paragraph 4.

NATHAN S. MORRIS [9431]  
RICHARDS BRANDT MILLER NELSON  
Attorneys for Defendant  
Wells Fargo Center, 15<sup>th</sup> Floor  
299 South Main Street  
P.O. Box 2465  
Salt Lake City, Utah 84110-2465  
Email: [Nathan-Morris@rbmn.com](mailto:Nathan-Morris@rbmn.com)  
Telephone: (801) 531-2000  
Fax No.: (801) 532-5506

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IN THE THIRD JUDICIAL DISTRICT COURT

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IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

PAULINE L. HENRY,

Plaintiff,

vs.

UTAH TRANSIT AUTHORITY,

Defendant.

**SUBPOENA DUCES TECUM**  
**(No Appearance Necessary**  
**If Records Are Produced)**

Civil No. 110912562

Judge Sandra Peuler

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**TO:** Mount Olympus Senior Center  
Attn: Human Resources Records Custodian  
1635 Murray Holladay Road  
Salt Lake City, UT 84117

**YOU ARE COMMANDED** pursuant to Rule 45 of the Utah Rules of Civil Procedure to produce or make available copies of any and all records described on Attachment "A" to this

Subpoena relating to Pauline Henry; Date of Birth: \_\_\_\_\_ ; Social Security Number: \_\_\_\_\_

; at the law offices of RICHARDS BRANDT MILLER NELSON, 299 South Main, 15<sup>th</sup> Floor, Salt Lake City, Utah 84111, within fourteen (14) days of the date of service.

**REDACTED**

This Subpoena Duces Tecum does not require the appearance of any person on behalf of Mount Olympus Senior Center, but only the production of the documents specified above.

The records requested are an element of a claim or defense in a claim against defendant Utah Transit Authority.

DATED this 6<sup>th</sup> day of March, 2012.

RICHARDS BRANDT MILLER NELSON



NATHAN S. MORRIS  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 12<sup>th</sup> day of March, 2012, to the following:

Darren Davis  
ADAMS DAVIS, P.C.  
35 West Broadway, Suite 203  
Salt Lake City, UT 84101  
*Attorneys for Plaintiff*



**ATTACHMENT "A"**

**EMPLOYMENT RECORDS REQUEST**

**RE: Pauline Henry  
D.O.B.:  
S.S.N.:**

Please provide a copy of any and all employment records in your possession regarding the above-named individual, including but not limited to:

**LAST KNOWN ADDRESS AND TELEPHONE NUMBER**

Applications for Employment

Correspondence

Performance Appraisal Reports

Disciplinary Action

Promotions/Demotions

Payroll/Wages

Corporate Medical Records

Workers Compensation Claims

Insurance Documents

Disability Claims

**and any additional records documents not listed above.**

CHRISTIAN W. NELSON [5771]  
BRANDON B. HOBBS [8206]  
RICHARDS BRANDT MILLER NELSON  
Wells Fargo Center, 15th Floor  
299 South Main Street  
P.O. Box 2465  
Salt Lake City, Utah 84110-2465  
Email: Christian-Nelson@rbmn.com  
Brandon-Hobbs@rbmn.com  
Telephone: (801) 531-2000  
Fax No.: (801) 532-5506

Attorneys for Defendant Wellcon, Inc.

---

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

**Eileen Christensen**, individually and on  
behalf of the heirs and estate of **Jean  
Kuykendall**,

Plaintiff,

vs.

**Wellcon, Inc.**,

Defendant.

**Petition for Subpoena Releasing Phone  
Records of Jean Kuykendall**

Judge Andrew H. Stone  
Case No. 130905106

Tier 3

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Defendant, by and through its counsel of record, Christian W. Nelson and Brandon B. Hobbs, RICHARDS BRANDT MILLER NELSON, hereby requests the Court issue a subpoena to release any and all records, recordings, or other information regarding telephone calls placed by

or made to Ms. Jean Kuykendall from February 9, 2012 to February 16, 2012, while Ms. Kuykendall was incarcerated at the Salt Lake County Jail.

### STATEMENT OF FACTS

1. On February 16, 2012, Ms. Kuykendall was incarcerated at the Salt Lake County Jail. At that time, Ms. Kuykendall was thirty-six weeks pregnant and was considered a high risk pregnancy.

2. Ms. Kuykendall took telephone calls in her cell.

3. At approximately 9:20 p.m., on February 16, 2012, Ms. Kuykendall was on the telephone and she appeared very upset and agitated during the conversation. Soon thereafter, Ms. Kuykendall was found unresponsive in her cell and was transported to St. Mark's Hospital for emergency medical treatment for her and her unborn child.

4. Ms. Kuykendall's baby was delivered via cesarean section and survived, but Ms. Kuykendall never regained consciousness and passed away within a few days.

5. Ms. Kuykendall's baby was adopted to a family unrelated to this lawsuit.

6. Ms. Kuykendall's estate has now brought an action for medical malpractice/wrongful death against Defendant.

### ARGUMENT

Defendant requests the Court issue a subpoena to release the records of all telephone calls placed or received by Ms. Kuykendall from February 9, 2012 to February 16, 2012. The requested telephone records are classified as private under the Government Records Access Management Act, and can only be disclosed to Defendant pursuant to a court order. *See Utah*

Code Ann. § 63G-2-202(1)(e)(i) (2013). A governmental entity is required to disclose a record pursuant to the terms of a court order, provided that:

- (a) the record deals with a matter in controversy over which the court has jurisdiction;
- (b) the court has considered the merits of the request for access to the record;
- (c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:
  - (i) privacy interests in the case of private or controlled records; ...
- (d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access; and
- (e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

*Id.* § 63G-2-202(7). The Court has jurisdiction over this lawsuit and may issue a subpoena to release the records after weighing Defendant's interests with the interests favoring restriction of access.

The Court should issue a subpoena ordering the release of the requested telephone records to Defendant because these records are highly probative to this case and because the interests favoring access outweigh the privacy interests of Ms. Kuykendall and Ms. Kuykendall's minor child. These telephone records are relevant to the controversy before the Court because they will provide valuable information regarding Ms. Kuykendall's condition shortly before her death and circumstances that may have exasperated her physical condition. Furthermore, these records are likely to yield discoverable information to support Defendant's defenses to Plaintiffs' claims.

Defendant's interest in accessing these telephone records outweighs the privacy interests Ms. Kuykendall and Ms. Kuykendall's minor child have in restricting Defendant's access to the telephone records. The privacy expectations of Ms. Kuykendall and any person she spoke to on the phone were *significantly* diminished while Ms. Kuykendall was incarcerated at the Salt Lake County Jail. Inmates know that their interactions with family, friends, and others are supervised and monitored at the jail due to security concerns. Ms. Kuykendall and those persons to whom she was speaking knew that their telephone conversations were recorded. As such, even if Ms. Kuykendall was speaking to a pastor or a spouse, those communications would not be privileged because the communication does not constitute a "confidential communication," as defined by the Utah Rules of Evidence. Accordingly, there is no applicable legal privilege doctrine to protect Ms. Kuykendall's conversations from discovery.

Further, the privacy interest of Ms. Kuykendall's minor children will be protected by the limited use of the records at trial. Defendant seeks access to the records for use at trial and will not disclose the records for any other purpose. While Ms. Kuykendall's minor children have an interest in the telephone records inasmuch as she was a potential subject of the conversations, such interest does not outweigh Defendant's interest in accessing the records to aid in its defense.

#### **CONCLUSION**

Defendant respectfully requests the Court find that the interests favoring access to the telephone records outweigh the interests favoring restriction of access, and issue the attached subpoena.

Dated this 16<sup>th</sup> day of December, 2013.

RICHARDS BRANDT MILLER NELSON

/s/ Christian W. Nelson

CHRISTIAN W. NELSON

BRANDON B. HOBBS

Attorneys for Defendant Wellcon, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 16<sup>th</sup> day of December, 2013, I served the **PETITION FOR SUBPOENA RELEASING PHONE RECORDS OF JEAN KUYKENDALL** on the persons identified below as indicated:

Norman J. Younker  
Christian D. Austin  
FABIAN  
215 South State, Twelfth Floor  
Salt Lake City, Utah 84111  
**Attorneys for Plaintiff**

- |                                     |                             |
|-------------------------------------|-----------------------------|
| <input type="checkbox"/>            | U.S. Mail – Postage Prepaid |
| <input type="checkbox"/>            | Hand Delivery               |
| <input checked="" type="checkbox"/> | Electronic Filing           |
| <input type="checkbox"/>            | Email                       |

/s/ Ellen Harmon

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children's  
JUSTICE CENTER  
SALT LAKE COUNTY



**Ralph Chamness**  
Chief Deputy  
Civil Division

**Lisa Ashman**  
Administrative  
Operations

**SIM GILL**  
DISTRICT ATTORNEY

**Jeffrey William Hall**  
Chief Deputy  
Justice Division

**Blake Nakamura**  
Chief Deputy  
Justice Division

October 4, 2016

**BY E-MAIL (MSLAUGH@SLCO.ORG) AND HAND DELIVERY**

Salt Lake County GRAMA Local Appeals Board  
c/o Maren Slaugh, Salt Lake County Records Manager  
2001 S. State Street, Room N3-110  
Salt Lake City, Utah 84109

**Re: ACLU of Utah GRAMA Appeal; Hearing Date: October 18, 2016**

To Members of the Local Appeals Board:

The below sets forth the jointly held position of Salt Lake County ("County") and Salt Lake City ("City") in opposition to an appeal filed by the American Civil Liberties Union of Utah ("ACLU of Utah") on August 31, 2016 ("ACLU Appeal").

The ACLU Appeal arises from the County's partial denial of the ACLU of Utah's request ("ACLU Request") under the Utah Governmental Records Access and Management Act, 63G-2-101, et seq. ("GRAMA"), for records relating to a February 27, 2016, officer-involved critical incident near 250 South Rio Grande Street ("Rio Grande OICI"). The most recent partial denial, sent on August 18, 2016, which includes as exhibits the previous letters granting in part and denying in part the ACLU Request, is attached hereto as Exhibit A.

**The County's and City's Preliminary Statement**

The ACLU Request has presented a host of thorny issues for this Office to untangle. We recognize, as we must, that GRAMA requires a document-by-document analysis to determine whether each individual record should be disclosed. *See* Utah Code Ann. § 63G-2-201(5)(b). On the one side of this balancing test is the public's and the ACLU of Utah's statutory right of access to public documents when considering what many view as yet another of the type of officer involved critical incident ("OICI") that has sparked protests, anger, and calls for significant reforms nationwide. On the other side of the balancing test, however, are the constitutional protections afforded to criminal defendants under the United States and Utah Constitutions, statutes, and Rules of Evidence, including but not limited to: the presumption of innocence; the right to a fair trial before an unbiased tribunal; the right to confront one's accusers and, if necessary, seek to exclude evidence from trial if its probative value is substantially

outweighed by the danger of unfair prejudice; and, for juveniles, the presumptively non-public adjudication of criminal charges so that those individuals, ideally, may avoid the permanent taint of youthful indiscretions.

That last concern, in particular, has presented uniquely difficult issues in this case. It has generated a tightrope of sorts as we have attempted both to satisfy the public's calls for transparency and accountability for law enforcement—which, of course, required that this Office diligently investigate and timely release and explain its findings in the Rio Grande OICI—and to simultaneously protect the rights and interests of the juvenile involved. We have at all times endeavored to walk that tightrope with integrity, candor, and the appropriate deference to due process of law.

### **Factual Background of Rio Grande OICI**

On February 27, 2016, a man who has been identified as “KM” was riding his bicycle near the Road Home homeless shelter at 210 South Rio Grande Street in Salt Lake City. He approached a juvenile male (“Juvenile”) to purchase drugs.<sup>1</sup> KM offered to purchase a marijuana cigarette from the Juvenile for \$1.10, which was all the money KM had. The Juvenile said he only had meth to sell, but demanded KM give him the \$1.10 anyway. KM refused to part with his money but offered the Juvenile a metal rod, believed to be a broom or rake handle, instead.

The Juvenile took the metal rod and hit KM several times. He was assisted in this assault by another unidentified man who was also armed with a metal rod. KM abandoned his bicycle and retreated on foot, pursued by the two men.

Two Salt Lake City police officers saw the altercation from across the street. They saw KM being beaten and pursued by the Juvenile and the other man. The officers approached the scene and ordered the two attackers to drop their objects and stop the attack. The second man, not the Juvenile, saw the officers, dropped his metal rod, and disappeared into the crowd. The Juvenile, however, did not stop his attack or drop his weapon. Indeed, the Juvenile did not respond at all to repeated commands to stop and drop the weapon.

Believing the metal rod to be a sword or a pipe, and not having obtained compliance by the Juvenile to their repeated demands to “Stop!” or “Drop it!,” the officers fired on him, injuring him severely (but, fortunately, not fatally).

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<sup>1</sup> This individual is currently the subject of pending criminal charges in juvenile court. Although he has been identified by name in the media and elsewhere, it is the policy of the Salt Lake County District Attorney's Office to not publicly identify juvenile defendants.

## The County's and City's Partial Grants and Partial Denials of the ACLU Request

The ACLU Request (attached hereto as Exhibit B) requested six broad categories of records relating to the Rio Grande OICI:

1. Chronological logs, complaint logs or service calls

These were produced on June 11, 2016 (and supplemented on August 18, 2016), subject to certain redactions pursuant to Utah Code Annotated section 63G-2-305(10). *See also* Utah Code. Ann. § 63G-2-302(2)(d). Those redactions are not challenged here.

2. Initial contact reports

These were produced on June 11, 2016 (and supplemented on August 18, 2016), subject to certain redactions pursuant to Utah Code Annotated section 63G-2-305(10). *See also* Utah Code. Ann. § 63G-2-302(2)(d). Those redactions are not challenged here.

3. After-incident reports

These records were withheld as “protected” under GRAMA. Utah Code Ann. § 63G-2-305(10). That decision is not challenged here.

4. Photographs

We determined that 93 photographs fell within the scope of the ACLU Request, i.e., photographs of the injured juvenile or photographs depicting the specific area where the Rio Grande OICI took place or evidence relevant to the Rio Grande OICI itself. Of those, 25 photographs were produced on June 11, 2016, and 57 photographs were produced on August 18, 2016. The remaining 11 photographs remain withheld because (i) they are material evidence in a pending criminal prosecution,” *see* Utah Code Ann. § 63G-2-305(10)(b), and (ii) their release “could create a danger of depriving a person of a right to a fair trial,” *see* Utah Code Ann. § 63G-2-305(10)(c). Our decision to withhold the remaining 11 photographs is challenged here.

5. Body camera footage

We withheld body camera footage of the two officers directly involved in the Rio Grande OICI because (i) they are material evidence in a pending criminal prosecution,” *see* Utah Code Ann. § 63G-2-305(10)(b), and (ii) their release “could create a danger of depriving a person of a right to a fair trial,” *see* Utah Code Ann. § 63G-2-305(10)(c). That decision is challenged here.

We also withheld a synced, side-by-side forensic analysis of the two officers’ body camera footage, which was prepared at the request of attorneys in the District Attorney’s Office and thus is “protected” attorney work product. *See* Utah Code Ann. § 63G-2-305(18). That decision is not challenged here.

6. Other video footage of the Incident and area, including but not limited to dash-cam and/or surveillance video

We withheld footage from two surveillance cameras that captured footage relevant to the Rio Grande OICI because (i) they are material evidence in a pending criminal prosecution,” *see* Utah Code Ann. § 63G-2-305(10)(b), and (ii) their release “could create a danger of depriving a person of a right to a fair trial,” *see* Utah Code Ann. § 63G-2-305(10)(c). That decision is challenged here.

### **The County’s and City’s Position on Appeal**

As noted previously, the ACLU Request presents unique and difficult issues regarding the public’s statutory right of access to government records as compared to the constitutional rights of an individual—here, a juvenile charged with criminal conduct. Importantly, of the few records still being withheld under GRAMA, they all either depict the Juvenile actually engaging in the precise conduct with which he is now criminally charged (the two body camera videos and the two surveillance videos) or depict evidence of the Juvenile’s allegedly criminal activity (the 11 photographs depicting, for example, drug wrappers) (collectively, “Protected Records”). The Protected Records also, we believe, undermine or directly conflict with statements made by the Juvenile to the media, thereby substantially impeaching his credibility as a “victim” and as a witness.

Presumably, the prosecuting attorney will attempt to have the Protected Records introduced at trial. Equally presumably, the defense attorney will likely seek to have the Protected Records excluded. Respectfully, it is for the judge, not the County or the City—or, certainly, not the ACLU of Utah—to make those important decisions, i.e., to weigh the rights of the accused against whatever arguments the State may wish to make. That is perhaps especially so given that the Juvenile’s criminal defense attorneys have not appeared here, and thus have not weighed in on whether they believe the Juvenile’s right to a fair trial would be substantially burdened by the premature release of these records.

The County and City continue to believe the Protected Records should be withheld for at least the following reasons:

First, the Protected Records are properly classified as “protected” material evidence in a pending criminal prosecution. Utah Code Ann. § 63G-2-305(10)(b). The Protected Records have, of course, already been provided to the Juvenile’s defense attorney as required by law, but a request for these records by a third party, who is unrelated to and disinterested in the Juvenile’s criminal defense, is rightfully weighted differently. The prosecuting attorney will almost certainly seek to admit the Protected Records at trial and it is entirely possible that the Juvenile’s attorney may seek to have them excluded from evidence, arguing that the prejudicial effect of the records outweighs their evidential value. Releasing to a third party contested material evidence in a criminal case, particularly when the evidence relates to a matter pending in juvenile court (where many proceedings are not public), would, we believe, unfairly undermine the Juvenile’s evidentiary objections and interfere with the juvenile court’s ability to manage the criminal case

within the broad confines of the assigned judge's reasonable discretion and within the four corners of the courtroom.

Second, the Protected Records are properly classified as "protected" because their release at this time "could create a danger of depriving a person of a right to a fair trial." Utah Code Ann. § 63G-2-305(10)(c). We recognize and respect the ACLU of Utah's arguments about a court's ability to seat an unbiased jury and instruct that jury to disregard outside media coverage. Here, however, we are concerned not just with the Juvenile's due process right to a fair trial before an unbiased tribunal, but also his right to the presumption of innocence and the presumptively non-public adjudication of certain juvenile matters (so that juveniles may, for example, not be forever tainted by youthful mistakes). *Cf. also* Utah Code Ann. § 63G-2-302(2) (permitting "private" treatment of records where their "disclosure . . . [would] constitute[] a clearly unwarranted invasion of personal privacy").

Third, the Juvenile and perhaps some of the witnesses to Rio Grande incident (but, notably, not the officers) have given prominently reported public statements that are clearly contradicted by the evidence presented in the Protected Records. The effect of those contradictory statements and the extent to which they provide the juvenile court with a distinct means of judging the credibility of witnesses is a matter that should remain within the judicial discretion of the judge presiding at the Juvenile's trial. *See* Utah Code Ann. § 63G-2-305(10)(b), (c).

Fourth, witnesses in the juvenile trial should give their testimonies untainted by having viewed the Protected Records, which—again—will permit the judge to determine what those persons reasonably believed at the time, which beliefs will almost certainly be important in the trial, regardless of what the Protected Records indicate. *See* Utah Code Ann. § 63G-2-305(10)(b), (c).

Fifth, as we have stated throughout, we are well aware that GRAMA requires a document-by-document analysis to determine whether, on balance, the public's interest in disclosure is equal to or greater than the County's or the City's interest in restricting access at this time. GRAMA section, 63G-2- 201(5)(b). The County, in careful consultation with the City, has undertaken careful consideration of the balancing test and it is incorrect to suggest otherwise. On the one side of this balancing test is the public's strong statutory interest, supported by GRAMA, in OICIs generally, as well as legitimate demands for increased transparency and accountability for police officers accused of wrong-doing. But on the other side of the balancing test are the constitutional, statutory, and rule-based rights afforded to individuals accused of criminal misconduct, especially when those individuals are juveniles.

Respectfully, the ACLU of Utah ignores that a “balancing test” is, by nature, a two-way street, which is often characterized by compromise on both sides. The ACLU of Utah appears to have given no consideration at all to the potential for compromise in a matter where there are obvious and significant interests on both sides of the balance.<sup>2</sup> One would think the civil liberties of the Juvenile regarding his upcoming trial would weigh heavily in the calculations of an organization purportedly dedicated to protecting those liberties, especially considering that his civil liberties are grounded on a clear constitutional foundation and are not fully represented in this forum. Yet the ACLU of Utah clearly does not consider those rights worthy of serious consideration.

Instead, and despite the careful consideration and good faith the County and City have demonstrated throughout this discussion, the ACLU of Utah has accused us—with no evidence in support—of engaging in no more than self-serving “speculation” regarding the Juvenile’s rights and the potential effect of a premature release of the Protected Records. The ACLU of Utah further urges that such “speculation” should be wholly disregarded, regardless of consequence to the individual. But the provisions of GRAMA cited herein, which permit a “protected” classification of records used in investigations and hearings, are founded on the need to make a careful and professionally informed calculation of the likelihood of a future result. We are instructed to analyze the records at issue to determine what might “reasonably . . . be expected to” have a detrimental effect on the Juvenile, in particular, or on the prosecution’s efforts to uphold its constitutional and ethical obligations, more generally. Respectfully, this office engages in literally thousands of criminal investigations and hearings in a year; its reasonable and professional “speculation” of evidentiary outcomes should not be lightly disregarded.

The County and City recognize that the balance in this case is admittedly close. In the end, however, we believe this case presents a distinct situation where the constitutional rights and interests of the one outweigh the statutory rights and interests of the many.

---

<sup>2</sup> An obvious compromise that would recognize and sustain both the interests of the public and the Juvenile would be to give the juvenile judge sufficient time and deference to make a decision regarding what to do with the Protected Records. This could be done in a controlled courtroom setting and within the discretion of the judge, recognizing the judge’s inherent ability and duty to give effect to both interests. It would also allow due consideration of the relevant evidentiary issues, with the Juvenile’s interests fully represented and considered, and would remove this determination from the public and political clamor that surrounds it.

## Conclusion

If the withheld records were, for example, a videotaped confession or bloody fingerprints at a murder scene, nobody—and, again, certainly not the ACLU of Utah—would question that premature release of those records might both violate the defendant’s rights and undermine the credibility of any pending prosecution. And yet the ACLU of Utah has failed to articulate any meaningful difference between those items of evidence and the evidence here. That is because the only difference is the medium on which the evidence was recorded, i.e., body or surveillance cameras rather than some other sort of audio or videotape or paper record. And that, without more, simply cannot be enough to justify tossing aside the Constitution to accede to the ACLU of Utah’s demand for premature release of material evidence in a pending criminal matter.

For these reasons and others more fully detailed above, the County and City respectfully request that the Local Appeals Board uphold the partial denials of the ACLU Request at issue in this appeal.

\*\*\*

If you have any questions or concerns, please do not hesitate to contact me at [dgoddard@slco.org](mailto:dgoddard@slco.org) or 385.468.7761.

Best regards,  
/s  
Darcy M. Goddard  
Chief Policy Advisor (Civil Division)  
& Deputy District Attorney

Enclosures

cc (by e-mail only):

David C. Reymann ([dreymann@parrbrown.com](mailto:dreymann@parrbrown.com))

Leah Farrell ([lfarrell@acluutah.org](mailto:lfarrell@acluutah.org))

Mark Kittrell ([mark.kittrell@slcgov.com](mailto:mark.kittrell@slcgov.com))

# Exhibit A



children's  
**JUSTICE CENTER**  
SALT LAKE COUNTY



**Ralph Chamness**  
Chief Deputy  
Civil Division

**Lisa Ashman**  
Administrative  
Operations

**SIM GILL**  
DISTRICT ATTORNEY

**Jeffrey William Hall**  
Chief Deputy  
Justice Division

**Blake Nakamura**  
Chief Deputy  
Justice Division

August 18, 2016

**BY E-MAIL (LFARRELL@ACLUUTAH.ORG) AND FIRST-CLASS MAIL**

Ms. Leah Farrell, Staff Attorney  
American Civil Liberties Union of Utah  
355 North 300 West  
Salt Lake City, Utah 84103

**Re: ACLU of Utah GRAMA request, Rio Grande OICI (dated May 12, 2016);  
Second supplemental response**

Dear Leah:

This is the second supplemental joint response from the Salt Lake County District Attorney's Office ("County") and Salt Lake City ("City") to your request for records under the Utah Governmental Records Access and Management Act, 63G-2-101, et seq. ("GRAMA"), dated May 12, 2016, relating to the February 27, 2016, officer-involved critical incident near 250 South Rio Grande Street ("Rio Grande OICI").

**Preliminary Background**

As you are aware, this request—and the cases underlying it—has presented a host of thorny issues for this Office to untangle. We recognize, as we must, that GRAMA requires a document-by-document analysis to determine whether each individual record should be disclosed, i.e., whether, on balance, the public's interest in disclosure is equal to or greater than this Office's or the City's interest in restricting access at this time. *See* Utah Code Ann. § 63G-2-201(5)(b). On the one side of this balancing test is the public's and the ACLU of Utah's First Amendment rights and concerns when considering what many view as yet another of the type of officer involved critical incident ("OICI") that has sparked protests, anger, and calls for significant reforms nationwide. On the other side of the balancing test, however, are the constitutional protections afforded to criminal defendants (and potential criminal defendants) under the United States and Utah Constitutions, statutes, and Rules of Evidence, including but not limited to: the presumption of innocence; the right to a fair trial before an unbiased tribunal; the right to confront one's accusers and, if necessary, seek to exclude evidence from trial if its probative value is substantially outweighed by the danger of unfair prejudice; and, for juveniles, the presumptively non-public adjudication of criminal charges so that those individuals, ideally, may avoid the permanent taint of youthful indiscretions to rehabilitate and thrive as future law-abiding adults.

That last concern, in particular, has presented uniquely difficult issues in this case. It has generated a tightrope of sorts as we have attempted both to satisfy the public's calls for transparency and accountability for law enforcement—which, of course, required that this Office diligently investigate and timely release and explain its findings in the Rio Grande OICI—and to simultaneously protect the rights and interests of the juvenile involved. As we explained to you and your co-counsel David Reymann several times previously—in what we believe were unprecedented efforts by this Office to explain in good faith why we believed it might not be in the juvenile's best interest to release certain records<sup>1</sup>—we have at all times endeavored to walk that tightrope with integrity, candor, and the appropriate deference to due process of law.

### **Previous Responses and Today's Supplemental Production**

As you will recall, in our original June 11, 2016, GRAMA response (Exhibit A hereto), as well as in our June 21, 2016, supplemental response (Exhibit B hereto), we withheld certain photographic and video records pursuant to Utah Code Annotated section 63G-2-305(10)(a), because the County and City jointly determined that release of those records “reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing,

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<sup>1</sup> It was thus disheartening that the ACLU of Utah, despite repeatedly demanding timely resolution on the OICI and knowing full well the basis of our concerns regarding release of videographic records, publicly proclaimed that it was “shocked and dismayed that the government still refuses to release the body camera and surveillance video footage, which the public has the right to review under Utah law,” and criticized DA Gill for providing what was, in fact, a limited and carefully tailored description of the juvenile's conduct (and not the videographic evidence) that helped form the basis for DA Gill's decision on the OICI.

When making those statements, the ACLU of Utah knew (or should have known) there was no way for DA Gill to resolve and explain the OICI with no discussion at all of the juvenile's and officers' actions that preceded it. The ACLU of Utah certainly knew (or should have known) that there is a substantive evidentiary difference between providing a carefully prescribed narrative description of conduct based primarily on eye witness accounts, on the one hand, and releasing videographic evidence of alleged criminal behavior, on the other hand. And the ACLU of Utah also knew (or should have known) that, for us to protect the juvenile's rights and interests as expressed to you privately, and as expressed publicly by DA Gill when announcing the OICI investigation results, we would be severely constrained in our ability to respond to the ACLU of Utah's criticisms. The same is true, frankly, for the juvenile, who was provided a copy of the videographic records (and many other documents) in discovery in his criminal case, and who has a constitutional right not to answer to us or the media or the ACLU of Utah (or anyone else) about their specific contents or demands for their release.

Respectfully, as an organization that we trust cares deeply about the rights of criminal defendants, we believe the ACLU of Utah should appreciate and respect that the constitutional rights and privacy interests of a juvenile facing two felony counts and possible certification for trial as a Serious Youth Offender are more important than any short-term public relations “win” by you, by this Office, or by anyone else.

certification, or registration purposes.” *See also id.* at 63G-2-305(10)(c). The investigation in question was the District Attorney’s Office’s investigation into the Rio Grande OICI.

As you are aware, that investigation concluded on August 8, 2016, when Salt Lake County District Attorney Sim Gill (“DA Gill”) issued a report to Salt Lake County Sheriff Jim Winder and Salt Lake City Police Chief Mike Brown in UPD Case No. 2016-31482, SLCPD Case No. 2016-35164, DA Case No. 2016-714, in which DA Gill explained in great detail why he had concluded the officers’ actions on February 27 were justified under existing Utah state law. A copy of that report is produced herein (Bates stamped SLCo-SLCity ACLU GRAMA Resp. 0109-0132).

Also produced herein is the independent expert report of Dr. Ron Martinelli, Martinelli & Associates, dated August 4, 2016 (Bates stamped SLCo-SLCity ACLU GRAMA Resp. 0133-0147), which was one of the many items of evidence considered by DA Gill in reaching his determination regarding the Rio Grande OICI. The same is true of the enclosed PowerPoint presentation prepared by some of the investigating officers (Bates stamped SLCo-SLCity ACLU GRAMA Resp. 0148-0214). For reasons explained more fully *infra* at pp. 4-5, we have redacted from these records information pertaining specifically to allegedly criminal behavior by the juvenile injured in the Rio Grande OICI, who has since been charged with two felony counts arising from the same chain of events, and as such is entitled both to the presumption of innocence and to all the due process protections provided by the United States and Utah Constitutions and state law. We have also redacted from these records the names and contact information of eye witnesses to the juvenile’s conduct, as we reasonably believe, given the pendency of criminal charges against the juvenile and information gathered pertaining to his past and current alleged associations and actions, that witness information is properly classified as “protected” under Utah Code Annotated 63G-2-305(10)(b), (d), -305(11).

Last, as I indicated in my June 11 GRAMA response (Ex. A hereto at 1), now that the Rio Grande OICI is no longer under investigation, certain records previously withheld by the County have now been re-examined and, we believe, are no longer “protected” within the meaning of Utah Code Annotated section 63G-2-305(10)(a). Those records include 57 of the previously withheld 68 photographs, which are produced herein (Bates stamped SLCo-SLCity ACLU GRAMA Resp. 0215-0271). We are also reproducing certain previously redacted records from the City, which have been re-examined and are subject to specific “un-redactions” of information that is no longer “protected,” such as the officers’ names (Bates stamped SLCo-SLCity ACLU GRAMA Resp. 0272-0352).

## Records That Remain “Protected” Under GRAMA

The remaining records that were withheld by the County and City in their joint June 11 GRAMA response, as well as their June 21 supplemental GRAMA response, i.e., body camera footage from the two officers primarily involved in the Rio Grande OICI, two surveillance camera videos, the remaining 11 photographs, and witness information redacted from the City’s records, remain classified as “protected” under GRAMA and will not be provided.<sup>2</sup>

In regard to the redactions, we reasonably believe, given the pendency of criminal charges against the juvenile and information gathered pertaining to his past and current alleged associations and actions, that eye witness names and other identifying information is properly classified as “protected” under Utah Code Annotated 63G-2-305(10)(b), (d), -305(11).

In regard to the body camera footage, surveillance camera footage, and 11 remaining photographs (collectively, “Protected Records”), this Office believes they are not subject to release at this time for at least the following reasons (see also discussion supra p. 1-2 & n.1):

First, the Protected Records are properly classified as “protected” material evidence in a pending criminal prosecution, *see* Utah Code Ann. § 63G-2-305(10)(b). The Protected Records have, of course, already been provided to the juvenile’s attorney as required by law, but a third-party request for these records is, we believe, rightfully weighed differently. Our Office will almost certainly seek to admit the Protected Records at trial, and it is entirely possible that the juvenile’s attorney may seek to have them excluded from evidence. Release to a third party of material evidence in a criminal case, particularly when the evidence relates to a matter pending in juvenile court (where many proceedings are not public), would, we believe, unfairly undermine the juvenile’s evidentiary objections (if any) and interfere with the juvenile court’s ability to manage the criminal case within the broad confines of the assigned judge’s reasonable discretion.<sup>3</sup>

Second, the Protected Records are properly classified as “protected” because their release at this time “could create a danger of depriving a person of a right to a fair trial,” *see* Utah Code Ann. § 63G-2-305(10)(c). Although we recognize and respect your earlier arguments about a court’s ability to seat an unbiased jury and instruct that jury to disregard outside media coverage, here, we are concerned here not just with the juvenile’s due process right to a fair trial before an unbiased tribunal, but also his right to the presumption of innocence and the presumptively non-public adjudication of juvenile matters (so that juveniles may, for example, not be forever tainted

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<sup>2</sup> We also will not produce a synced, side-by-side forensic analysis of the two officers’ body camera footage, which was prepared at the request of attorneys in the District Attorney’s Office and thus is considered “protected” attorney work product. *See* Utah Code Ann. § 63G-2-305(18).

<sup>3</sup> Of course, if the ACLU of Utah obtains an order from the juvenile court authorizing release of the Protected Records, we will comply with that order. Utah Code Ann. § 63G-2-202(7).

by youthful mistakes). *Cf. also* Utah Code Ann. § 63G-2-302(2) (permitting “private” treatment of records “the disclosure of which constitutes a clearly unwarranted invasion of personal privacy”).

Third, as stated previously, we are well aware that GRAMA requires a document-by-document analysis to determine whether, on balance, the public’s interest in disclosure is equal to or greater than this Office’s or the City’s interest in restricting access at this time. *See* Utah Code Ann. § 63G-2- 201(5)(b). Please understand that my Office, in careful consultation with the City, has undertaken careful consideration of the balancing test. On the one side of this balancing test are the First Amendment and the public’s strong interest in this matter, in particular, and in OICIs more generally, as well as legitimate demands for increased transparency and accountability for officers accused of wrong-doing. But on the other side of the balancing test are the constitutional, statutory, and rule-based rights afforded to individuals accused of criminal misconduct, especially when those individuals are juveniles. The balance in this case is admittedly close. In the end, however, we believe this case presents a [perhaps rare] situation where the constitutional rights and interests of the one outweigh the constitutional rights and interests of the many.

### **Appeal Rights**

As Mr. Reymann and I have discussed previously, if you wish to appeal this matter, we will consider your first and second stages of appeal already satisfied. You thus may appeal this second supplemental response directly to the County’s Local Appeals Board as provided in Salt Lake County ordinance 2.82.100 and Salt Lake County Policy 2040 (copy provided previously). Your previously filed appeal to the City, as agreed previously, remains on hold pending final determination by the County’s Local Appeals Board.

That said, given the unusual nature of this case, I have an unusual suggestion: considering the importance of the rights at issue, and what we acknowledge is a close call on the balancing test mandated by GRAMA, should you wish to arrange an “attorneys’ eyes only” review of the videographic Protected Records, pursuant to a stipulated non-waiver agreement signed by all counsel, before determining whether to file your appeal, please contact me and I will work to arrange it forthwith.

If you have any questions or concerns, please do not hesitate to contact me at [dgoddard@slco.org](mailto:dgoddard@slco.org) or 385.468.7761.

Best regards,  
/s  
Darcy M. Goddard  
Chief Policy Advisor (Civil Division)  
& Deputy District Attorney



Ms. Leah Farrell  
August 18, 2016  
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Enclosures

cc (by e-mail only):

David C. Reymann (dreymann@parrbrown.com)  
Mark Kittrell (mark.kittrell@slcgov.com)



**Ralph Chamness**  
Chief Deputy  
Civil Division

**Lisa Ashman**  
Administrative  
Operations

**SIM GILL**  
DISTRICT ATTORNEY

**Jeffrey William Hall**  
Chief Deputy  
Justice Division

**Blake Nakamura**  
Chief Deputy  
Justice Division

June 11, 2016

**BY E-MAIL (LFARRELL@ACLUUTAH.ORG) AND FIRST-CLASS MAIL**

Ms. Leah Farrell, Staff Attorney  
American Civil Liberties Union of Utah  
355 North 300 West  
Salt Lake City, Utah 84103

**Re: ACLU of Utah GRAMA Request (dated May 12, 2016)**

Dear Leah:

We received your request for records under the Utah Governmental Records Access and Management Act, 63G-2-101, et seq. (“GRAMA”), dated May 12, 2016. Please consider this response to be jointly provided by the Salt Lake County District Attorney’s Office (“Office”) and the Salt Lake City Police Department (“City”), which received a largely identical GRAMA request from you on or about the same date.

Timeline of response

Given the significant volume of records to be evaluated in connection with your request, and the need to confer with counsel for the City, we advised you by letter dated May 18, 2016, that we would be unable to process your request on the expedited five-day timeline you requested. *See, e.g.*, Utah Code Ann. § 63G-2-204(3)(b)(iv), (5)(c)(i), (f); *see also* Salt Lake County ordinance 2.82.080(C)(2)(b), (d). We thereafter met with you and David Reymann (copied) on May 24, 2016 (“May 24 Meeting”), to discuss and refine your GRAMA request given its very broad language. Thank you again for engaging in that frank dialogue, which enabled us to focus our inquiry on the materials with which we understand you are primarily concerned.

Status of investigation and related classifications

As I stated at our May 24 Meeting, our Office’s investigation of the February 27, 2016, officer-involved critical incident near 250 South Rio Grande Street (“Rio Grande OICI”) is ongoing, such that certain of the requested records are presently classified by this Office and the City as “protected” under GRAMA, Utah Code Ann. § 63G-2-305(10)(a). That classification may change as the investigation continues or concludes.

Exhibit 1

In addition, as required by GRAMA, Utah Code Ann. § 63G-2-201(5)(b), we analyzed each individual record classified as “protected” to determine whether, on balance, the public’s interest in disclosure was equal to or greater than this Office’s or the City’s interest in restricting access at this time. That balancing test is reflected in each determination explained below.

Records requested

1. Chronological logs, complaint logs or service calls

The requested records are produced with the hard copy of this correspondence, Bates stamped SLCo-SLCity ACLU GRAMA Resp. 0001-0077. Where necessary to protect the identities of specific witnesses in connection with the Office’s on-going investigation of the Rio Grande OICI, or to protect the identity of juvenile(s), limited portions of those records have been redacted consistent with their “protected” classification under GRAMA. Utah Code Ann. § 63G-2-305(10); *see also* Utah Code. Ann. § 63G-2-302(2)(d).

2. Initial contact reports

The requested records are produced with the hard copy of this correspondence, Bates stamped SLCo-SLCity ACLU GRAMA Resp. 0078-0083. Where necessary to protect the identities of specific witnesses in connection with the Office’s on-going investigation of the Rio Grande OICI, or to protect the identity of juvenile(s), limited portions of those records have been redacted consistent with their “protected” classification under GRAMA. Utah Code Ann. § 63G-2-305(10); *see also* Utah Code. Ann. § 63G-2-302(2)(d).

3. After-incident reports

These records are currently classified as “protected” under GRAMA. Utah Code Ann. § 63G-2-305(10). That classification may change as the investigation continues or concludes, but the records will not be produced at this time.

4. Photographs

As we discussed and agreed at our May 24 Meeting, I examined approximately 500 images collected in connection with the Office’s on-going investigation of the Rio Grande OICI. Of the approximately 500 photographs I reviewed, 93 fit the refined criteria to which you agreed at that meeting, i.e., photographs of the injured juvenile or photographs depicting the specific area where the Rio Grande OICI took place or evidence relevant to the Rio Grande OICI itself.

None of the photographs depict the injured juvenile. The photographs do depict, among other things, the physical location where the OICI occurred, evidence relating to the OICI and the events that preceded it, evidence tags, police tape, clothing, and other personal items we believe are relevant to our on-going investigation into the Rio Grande OICI. After carefully reviewing the 93 photographs falling within your refined criteria, we are producing 25 to you in connection with your GRAMA request. Those photographs are produced with the hard copy of this correspondence, Bates stamped SLCo-SLCity ACLU GRAMA Resp. 0084-0108.

The remaining 68 photographs are classified as “protected” pursuant to Utah Code Annotated section 63G-2-305(10)(a), (c), because we believe releasing them now reasonably could be expected to interfere with our investigation and might deprive an individual (whether the juvenile, an officer, or someone else) of the right to a fair trial.

5. Body camera footage

As we discussed at our May 24 Meeting, given the events that unfolded after the Rio Grande OICI and the number of officers from various jurisdictions who responded, we have collected over 60 records that might reasonably fall within the broad scope of your request for “body camera footage.” As such, we thank you for clarifying that, for now, you are seeking only footage relevant to the OICI itself.<sup>1</sup> We have two records that fall within your refined criteria, both of which are classified as “protected” pursuant to Utah Code Annotated section 63G-2-305(10)(a), (c), because we believe releasing them now reasonably could be expected to interfere with our investigation and might deprive an individual (whether the juvenile, an officer, or someone else) of the right to a fair trial.

The above classification is based not on the existence of an investigation generally, or due process concerns in the abstract, but on the specific facts of this investigation into both the Rio Grande OICI and the juvenile’s actions that preceded it. Those incidents both occurred in a public place with many witnesses present, not all of whom have been interviewed (and some of whom, given the transient nature of the area, may never be interviewed) and some of whom are depicted in the footage itself. As our investigation into these incidents continues, it is imperative that we get at the truth in a way that does not potentially taint evidence or witness testimony. To that end, we feel strongly that we must protect the independent recollections and rights of all persons depicted in the body camera footage at issue, including victims, alleged criminal perpetrators, police officers, witnesses and bystanders. And, while it is still unknown if any criminal charges will result (whether against the juvenile, a police officer, or someone else), we feel equally strongly that premature release of these records would run the risk of negatively affecting the due process rights of potential criminal defendant(s), if any, by unfairly tainting any potential jury pool.

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<sup>1</sup> As discussed and agreed, however, I will review randomly selected “body camera footage” (comprising approximately 10%-20% of the total) and provide you with a general description of what it depicts. Should you wish thereafter to refine your GRAMA request to address more specifically any additional footage you wish to see released, we will be happy to consider that refined request.

6. Other video footage of the Incident and area, including but not limited to dash-cam and/or surveillance video

As we discussed at our May 24 Meeting, Salt Lake City does not utilize dash cams and I am not aware of any other dash cam footage responsive to your request. The Office did, however, collect some surveillance footage from areas surrounding the shelter. After reviewing the footage that was collected, I located only one video that depicted the specific area where the Rio Grande OICI took place or evidence relevant to the Rio Grande OICI itself. That footage is classified as "protected" pursuant to Utah Code Annotated section 63G-2-305(10)(a), (c), because we believe releasing it now reasonably could be expected to interfere with our investigation and might deprive an individual (whether the juvenile, an officer, or someone else) of the right to a fair trial.

Again, that classification is based not on the existence of an investigation generally, or due process concerns in the abstract, but on the specific facts of this investigation into both the Rio Grande OICI and the juvenile's actions that preceded it. For a fuller explanation of our reasoning in that regard, please see section (5) above relating to body camera footage.

7. All other public records concerning the Incident

This portion of your request is, of course, both very broad and very vague. At this point, I am not aware of any records held by either this Office or the City that would be responsive to this request.

Appeal rights

You have the right to appeal this determination as set forth in Salt Lake County ordinance 2.82.100 and Salt Lake County Policy 2040 (enclosed). Because the Office designee for GRAMA appeals, Ralph Chamness (Chief Deputy of the Civil Division), was involved in reviewing and classifying these materials, we are willing to waive the first, agency-designee level of appeal.

If you have any questions or concerns, please do not hesitate to contact me at [dgoddard@slco.org](mailto:dgoddard@slco.org) or 385.468.7761.

Best regards,

/s

Darcy M. Goddard  
Chief Policy Advisor (Civil) & Deputy District Attorney

Ms. Leah Farrell  
June 11, 2016  
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Enclosures

cc (w/o encl.; by e-mail only):

David C. Reymann (dreymann@parrbrown.com)

Mark Kittrell (mark.kittrell@slcgov.com)

Margaret Plane (margaret.plane@slcgov.com)





**Ralph Chamness**  
Chief Deputy  
Civil Division

**Lisa Ashman**  
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Operations

**SIM GILL**  
DISTRICT ATTORNEY

**Jeffrey William Hall**  
Chief Deputy  
Justice Division

**Blake Nakamura**  
Chief Deputy  
Justice Division

June 21, 2016

**BY E-MAIL (LFARRELL@ACLUUTAH.ORG) AND FIRST-CLASS MAIL**

Ms. Leah Farrell, Staff Attorney  
American Civil Liberties Union of Utah  
355 North 300 West  
Salt Lake City, Utah 84103

**Re: ACLU of Utah GRAMA Request (dated May 12, 2016)**

Dear Leah:

This is a supplemental joint response from the Salt Lake County District Attorney's Office and Salt Lake City to your request for records under the Utah Governmental Records Access and Management Act, 63G-2-101, et seq. ("GRAMA"), dated May 12, 2016.

In our further review of records collected in connection with our Office's investigation of the February 27, 2016, officer-involved critical incident near 250 South Rio Grande Street, we located one additional surveillance video that is responsive to your GRAMA request. That surveillance video is classified as "protected" pursuant to Utah Code Annotated section 63G-2-305(10)(a), (c), because we believe releasing it now reasonably could be expected to interfere with our investigation and might deprive an individual (whether the juvenile, an officer, or someone else) of the right to a fair trial. For further explanation of this classification, please see my earlier letter to you dated June 11, 2016 (copy enclosed).

As to the County, you have the right to appeal this determination as set forth in Salt Lake County ordinance 2.82.100 and Salt Lake County Policy 2040 (copy enclosed). Because the Office designee for GRAMA appeals, Ralph Chamness (Chief Deputy of the Civil Division), was involved in reviewing and classifying these materials, we are willing to waive the first, agency-designee level of appeal.

As to the City, you may appeal to the City's Chief Administrative Officer by filing written notice with the City Recorder within 30 calendar days after the date that the joint City and County response was issued, pursuant to Utah Code Annotated section 63G-2-401. The notice of appeal must state your name, mailing address, daytime telephone number, and the relief you seek. The City requests that you also include a copy of your GRAMA request, if applicable. You may include a short statement of facts, reasons, and legal authority in support of

Exhibit 2

Ms. Leah Farrell  
June 21, 2016  
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your appeal. The address of the City Recorder is P.O. Box 145515, Salt Lake City, Utah 84114-5515.

If you have any questions or concerns, please do not hesitate to contact me at [dgoddard@slco.org](mailto:dgoddard@slco.org) or 385.468.7761.

Best regards,  
/s  
Darcy M. Goddard  
Chief Policy Advisor (Civil) & Deputy District Attorney

Enclosures

cc (by e-mail only):

David C. Reymann ([dreymann@parrbrown.com](mailto:dreymann@parrbrown.com))  
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# Exhibit B



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC  
355 NORTH 300 WEST, SALT LAKE CITY, UT 84103  
PHONE: (801) 521-9862 • FAX: (801) 532-2850  
ACLU@ACLUUTAH.ORG • WWW.ACLUUTAH.ORG

Salt Lake County District Attorney  
2001 South State Street S3-600  
Salt Lake City, Utah 84190

Via certified mail and hand delivery

May 12, 2016

Re: Public Records Request / Records regarding shooting of Abdi Mohamed,  
February 27, 2016

To Whom It May Concern:

This letter is a request under Utah Code § 63G-2-204(3)(b) by the American Civil Liberties Union of Utah (“ACLU of Utah”). This request seeks records regarding the February 27, 2016 police encounter with Abdi Mohamed in the approximate area of 250 South Rio Grande St. (440 West) (the “Incident”).

#### Records Requested

Please provide copies of the following created, updated, or edited, records from February 27, 2016, to the present regarding the Incident:

1. Chronological logs, complaint logs or service calls
2. Initial contact reports
3. After-incident reports
4. Photographs
5. Body camera footage
6. Other video footage of the Incident and area, including but not limited to dash-cam and/or surveillance video
7. All other public records concerning the Incident

Because this request is on a matter of public concern and because it is made on behalf of a non-profit organization, we request a fee waiver. *See* Utah Code § 63G-2-203(4). If, however, such a waiver is denied, we will reimburse you for the reasonable cost of copying. Please inform us in advance if the cost will be greater than fifty dollars (\$50). Please send us documents in electronic form if at all possible.

The ACLU of Utah is seeking this information for the benefit of the public, including, in particular, for the dissemination of information relevant to the Incident and

accountability for the officers and other individuals involved. Accordingly, the ACLU of Utah requests an expedited five-day response to this request. *See* Utah Code § 63G-2-204(3)(b). If any or part of this request is denied, please send a letter listing the specific exemptions upon which you rely for each denial. *See* Utah Code § 63G-2-205(2).

Thank you for your prompt attention to this matter. Please furnish all applicable records to ACLU of Utah, 355 North 300 West, Salt Lake City, UT 84103. If you have questions, please contact us.

Sincerely,



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Staff Attorney  
ACLU of Utah  
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801-521-9862 x 105

David Reymann  
Attorney  
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UTAH DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF ARCHIVES & RECORDS SERVICE

Home / State Records Committee / Decisions and Orders 2010- / Order

## STATE RECORDS COMMITTEE APPEAL HEARING 2010-05

### BEFORE THE STATE RECORDS COMMITTEE OF THE STATE OF UTAH

**CHRIS VANOCUR/ABC 4 NEWS, Petitioner, vs.**

**UTAH DEPARTMENT OF PUBLIC SAFETY, Respondent.**

### DECISION AND ORDER

#### Case No. 10-5

By this appeal, Petitioner, Chris Vanocur, Senior Reporter with ABC 4 News, ("Petitioner"), seeks access to the arrest records and dashboard camera video relating to the arrest of Sheldon Killpack on January 15, 2010.

#### FACTS

On January 15, 2010, Sheldon Killpack was arrested and charged for driving while intoxicated. At the time of his arrest, Mr. Killpack was serving as a Utah State Senator. On the same day as his arrest, Mary Rice, on behalf of ABC 4 News, made a Government Records Access and Management Act ("GRAMA") request to Respondent, Utah Department of Public Safety ("Respondent") for "[a]rrest records and dashboard camera video regarding the arrest of Utah Senator Sheldon Killpack on January 15, 2010." The reason for the request was "[p]ublic information for media broadcast purposes." In a letter dated January 19, 2010, Sargent Jeff Nigbur, Public Information Officer for Respondent, denied the records request finding that "[i]ncident reports and all accompanying data, such as dashcam videos, have been classified by the [Utah Highway Patrol] as protected records pursuant to Utah Code Ann. § 63G-2-305(9)."

In a letter dated January 21, 2010, Petitioner appealed Respondent's denial of the records request. Mr. Vanocur wrote that "ABC 4 strongly believes both the incident report and the dashcam video are very much in the public's interest as provided for under GRAMA." On January 28, 2010, D. Lance Davenport, Commissioner of the Utah Department of Public Safety denied Petitioner's appeal. Mr. Davenport wrote that the requested records were "created and is maintained by the Utah Highway Patrol for criminal enforcement purposes." Mr. Davenport further wrote that "the release of the records reasonably could be expected to interfere with enforcement proceedings or would create a danger of depriving a person of a right to a fair trial or impartial hearing."

Petitioner now appeals to the Utah State Record Committee ("Committee"). Pursuant to Utah Code Ann. § 63G-2-403(8) and Utah Admin. Code R. 35-1-2(7), the Salt Lake Tribune and the Deseret News joined Petitioner and argued before the Committee as interested third parties. The Committee having reviewed the arguments submitted by the parties, and having convened on February 11, 2010, a hearing to hear oral argument and testimony, now issues the following Decision and Order.

#### STATEMENT OF REASONSE FOR DECISION

1. GRAMA specifies that "all records are public unless otherwise expressly provided by statute." Utah Code Ann. § 63G-2-201(2). Records that are not public are designated as either "private," "protected," or "controlled." See Utah Code Ann. §§ 63G-2-302, -303, -304 and -305.
2. The requested records were created or maintained for civil, criminal, or administrative purposes or audit purposes, or for discipline, licensing certification, or registration purposes are protected records if release of the records could reasonably be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes. Utah Code Ann. § 63G-2-305(9)(a).
3. During the hearing, counsel for Respondent stated that the requested records were used to investigate whether criminal charges should be filed against Mr. Killpack. However, counsel for Respondent also stated that the investigation had been completed and criminal charges have been filed against Mr. Killpack. Counsel did not know if the requested records would be used in any future investigations.

4. Utah Code Ann. § 63G-2-305(9)(c) states that records can be protected if disclosure of the records would create a danger of depriving a person of a right to a fair trial or impartial hearing.
5. Petitioner argued that the release of the arrest records and dashboard camera video would not deprive Mr. Killpack of his right to a fair trial, noting that there are numerous instances where similar records have been released prior to the completion of a criminal trial of the subject of the records. Petitioner claimed that because of the news coverage Mr. Killpack has already received, the additional information from the requested records would not reasonably deprive Mr. Killpack of his constitutional right to a fair trial.
6. Petitioner also argued that based upon the fact that Mr. Killpack was a Utah State Senator at the time of his arrest, release of the requested records should be within the public's right to access to information concerning the conduct of the public's business. See, Utah Code Ann. § 63G-2-102(1)(a).
7. Petitioner further argued that the records were initial contact reports. Respondent argued that the records could not be characterized as initial contact reports because they were instead a "four page DUI form/report and video."
8. An initial contact report means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law. Utah Code Ann. § 63G-2-103(14)(a). Initial contact reports are normally public. Utah Code Ann. § 63G-2-301(3)(g).
9. After hearing arguments and reviewing the materials submitted by the parties, the Committee finds Respondent's claim that the records should be protected pursuant to Utah Code Ann. § 63G-2-305(9) unpersuasive. The evidence presented showed that any investigation of Mr. Killpack had been completed. Further, Respondent was unable to demonstrate how the release of the records would create a danger of depriving him of a right to a fair trial. Additionally, the Committee finds that the requested records are "initial contact reports" and therefore, are public records.

#### **ORDER**

THEREFORE, IT IS ORDERED THAT: the appeal of Petitioner Chris Vanocur/ABC 4 News, is upheld, and Respondent, Department of Public Safety is hereby ordered to release the initial arrest records and dashboard camera video regarding the arrest of Mr. Killpack pursuant to Utah Code Ann. § 63G-2-301(3)(g).

#### **RIGHT TO APPEAL**

Either party may appeal this Decision and Order to the District Court. The petition for review must be filed no later than thirty (30) days after the date of this order. The petition for judicial review must be a complaint. The complaint and the appeals process are governed by the Utah Rules of Civil Procedure and Utah Code Ann. § 63G-2-404. The court is required to make its decision de novo. In order to protect its rights on appeal, a party may wish to seek advice from an attorney.

#### **PENALTY NOTICE**

Pursuant to Utah Code Ann. § 63G-2-403(14)(d), the governmental entity herein shall comply with the order of the Committee and, if records are ordered to be produced, file: (1) a notice of compliance with the Committee upon production of the records; or (2) a notice of intent to appeal. If the governmental entity fails to file a notice of compliance or a notice of intent to appeal, the Committee may do either or both of the following: (1) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or (2) send written notice of the entity's noncompliance to the Governor for executive branch entities, to the Legislative Management Committee for legislative branch entities, and to the Judicial Council for judicial branch agencies' entities.

Dated this 18th day of February 2010.

SCOTT WHITTAKER, Chairman  
State Records Committee

*Page Last Updated*

*This opinion is subject to revision before final  
publication in the Pacific Reporter.*

IN THE SUPREME COURT OF THE STATE OF UTAH

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Deseret News Publishing Company,  
publisher of the Deseret Morning  
News,  
Plaintiff and Appellant,

No. 20060454

v.

Salt Lake County, a political  
subdivision of the State of  
Utah, and the Salt Lake County  
District Attorney's Office,  
Defendants and Appellees.

F I L E D

March 28, 2008

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Third District, Salt Lake  
The Honorable Tyrone E. Medley  
No. 050900725

Attorneys: Jeffrey J. Hunt, David C. Reymann, Michael T. Hoppe,  
Salt Lake City, for plaintiff  
Lohra L. Miller, Valerie M. Wilde, Salt Lake City,  
for defendants

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NEHRING, Justice:

**INTRODUCTION**

¶1 In this appeal, we are called upon to decide whether Salt Lake County's decision to deny the Deseret Morning News access to an investigative report of alleged sexual harassment was a lawful application of Utah's Government Records Access and Management Act, commonly known as GRAMA. The district court concluded that the County properly withheld the report. We disagree and reverse.

**BACKGROUND**

¶2 In November 2003, while Marcia Rice was an employee of the Salt Lake County Clerk's Office, she filed a sexual

harassment complaint against the office's chief deputy, Nick Floros. According to Ms. Rice, Mr. Floros helped her obtain a position for which she was unqualified, targeted Ms. Rice for his highly inappropriate sexual advances once she began her employment, and retaliated against her when she refused to submit to his libidinal overtures. Ms. Rice further claimed that Mr. Floros previously engaged in similar conduct with at least one other female employee and that county officials knew of Mr. Floros's inappropriate behavior and failed to respond.

¶3 Under Salt Lake County's Personnel Policy No. 5730, allegations of sexual harassment are to be investigated within fifteen calendar days of receipt of a written complaint. When Salt Lake County Clerk Sherrie Swensen learned of Ms. Rice's complaint, she placed Mr. Floros on administrative leave pending the outcome of an investigation. Citing her desire to ensure objectivity in the investigation and her long-term professional relationship with Mr. Floros, Ms. Swensen referred the investigation to the Salt Lake County District Attorney's Office.

¶4 District Attorney David Yocom retained two independent attorneys with experience in employment law to conduct the investigation and prepare a list of findings and recommendations. The investigating attorneys interviewed Ms. Rice, Mr. Floros, Ms. Swensen, and several other current and former county employees. Based on these interviews and a review of relevant documents, the investigators compiled a twenty-three-page investigative report. In February 2004, three days before the investigators delivered the report to Mr. Yocom, Mr. Floros retired.

¶5 The District Attorney's Office reviewed the report and sent Ms. Rice a summary of its contents. The summary is a public document, and it received extensive media coverage. According to the summary, the investigators concluded that the evidence substantiated Ms. Rice's complaint that Mr. Floros's conduct constituted "egregious violations" of county policy. It concluded that Mr. Floros, were he still employed with the County, should be immediately terminated and considered ineligible for future employment. The summary did not indicate whether the full investigative report addressed Mr. Floros's alleged history of sexual misconduct or whether the investigative report reached any conclusions concerning the manner in which Mr. Floros's superiors dealt with complaints about his conduct.

¶6 Armed with the summary, Ms. Rice filed a notice of claim with the United States Equal Employment Opportunity

Commission in July 2004. Several weeks later, the EEOC determined that reasonable cause existed to believe Ms. Rice had been the victim of sexual harassment and unlawful retaliation at the hands of Mr. Floros. In October 2004, Ms. Rice filed a federal civil rights lawsuit against the County, Ms. Swensen, and Mr. Floros, alleging sexual harassment and retaliation, which she eventually settled.

¶7 Meanwhile, a Deseret Morning News reporter, dissatisfied with the information contained in the summary, submitted a request authorized by GRAMA for a copy of the full investigative report. The County denied the reporter's GRAMA request, citing its policy to withhold from public access records "that are considered protected, confidential and/or private." In short order, the newspaper's lawyer challenged the County's denial. The lawyer asked the County to support its denial with specific statutory authority. The District Attorney's Office promptly replied with the information mandated by GRAMA to be included in a notice of denial. See Utah Code Ann. § 63-2-205(2) (2004).

¶8 GRAMA permits classifying as either "private" or "protected" any records that contain information that, if disclosed, would constitute a "clearly unwarranted invasion of personal privacy." Id. § 63-2-304(25). The District Attorney claimed that the Floros investigative report was such a document. The District Attorney next claimed that the report was "protected" because it was "created or maintained for . . . administrative enforcement [or disciplinary] purposes," and that its release "reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes."<sup>1</sup> Id. § 63-2-304(9). Finally, the District Attorney explained that the investigative report was classified as "protected" by express designation in the County's personnel policy governing sexual harassment.

¶9 The Deseret Morning News disagreed with the County's classifications. It first lodged an administrative appeal with Salt Lake County's Government Records Access Management Policy Administration Hearing Board. After a hearing, the Board denied the newspaper's request. The Board concluded that the County had properly classified the report and its contents. The newspaper then appealed to the Salt Lake County Council. Before the

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<sup>1</sup> Although the County originally cited section 63-2-304(17), which provides for protection of "records disclosing an attorney's work product," as grounds for its refusal to release the report, this provision is not at issue in this case.

Council, the District Attorney objected to the newspaper's request that Council members review the report in camera. He contended that the contents of the report were irrelevant to determining whether the County had properly classified it. The District Attorney also contended that the Council, despite being empowered to rule on the newspaper's appeal, need not look at the report's contents before passing judgment on its status under GRAMA. He anchored his resistance to disclosing the contents of the report in the text of GRAMA, but some, including the newspaper and Republican Party members of the Council, suspected other motives. They looked at the County's zealous protection of the report and suspected a political cover-up. Because many of the key players, notably the District Attorney and the County Clerk, were members of the Democratic Party serving in elected posts, Republican members of the Council charged that Democrats were helping keep the embarrassing details of the report from public view. The report, they believed, would direct unflattering light on the workplace environment in the County Clerk's Office and on its attitude toward sexual harassment allegations directed at high-level employees.

¶10 Rather than continue their skirmish over the propriety of in camera review by the Council, the newspaper and the County agreed to bypass the Council and move their dispute to court. The newspaper then began the lawsuit that resulted in this appeal.

¶11 District courts review record denials under GRAMA de novo. Id. § 63-2-404(7)(a). In the course of conducting its review of the disputed record, a court may consider and weigh interests and public policies bearing on whether the record should be disclosed. The newspaper and the County filed cross-motions for summary judgment on the issue of whether the report was properly classified under GRAMA. Although the County contended that the district court could affirm the County's classification decision as a matter of law, it argued that the weighing of interests and public policy to be undertaken by the court was a fact-intensive task beyond the reach of summary judgment. After conducting an in camera review of the report, the district court agreed with the County and issued a memorandum decision ruling that the County had properly classified the report and deferred its weighing of interests and public policy until it could gather facts. The newspaper appealed.

#### **ISSUES AND STANDARD OF REVIEW**

¶12 The Deseret Morning News attributes several errors to the district court. The newspaper insists that the court was

wrong when it declined to weigh interests and public policy as part of its assessment of whether the County had properly classified the report. It argues that had the district court not deferred its examination of these considerations, the court could have, and should have, ruled the report public as a matter of law. Through this appeal, we are called upon to decide how governmental entities go about the work of classifying records under GRAMA and how an entity's classification responsibilities shape the distribution of burdens between record requesters and governmental entities upon judicial review of a denied record request. These issues present questions of statutory interpretation that we review for correctness, affording no deference to the district court's legal conclusions. E.g., R.A. McKell Excavating, Inc. v. Wells Fargo Bank, N.A., 2004 UT 48, ¶ 7, 100 P.3d 1159.

## ANALYSIS

### I. OVERVIEW OF GRAMA

¶13 The Legislature enacted GRAMA to advance the cause of governmental transparency and accountability. When it explained why GRAMA was necessary, the Legislature expressed the view that both the right of access to information concerning the conduct of the public's business and the right of individual privacy concerning personal information acquired by governmental entities were entitled to constitutional protection. Utah Code Ann. § 63-2-102(1) (2004). Although both of these interests deserve constitutional dignity, they do not enjoy an altogether harmonious relationship. The provisions of GRAMA provide a rational framework for mediating the conflicts between these interests.

¶14 In addition to citing constitutional reasons for enacting GRAMA, the Legislature noted that the public policy of this state required that access to certain forms of information be restricted. Id. § 63-2-102(2)-(3). The Legislature's commitment to governmental transparency is reflected in GRAMA's declaration that "[a] record is public unless otherwise expressly provided by statute." Id. § 63-2-201(2). Moreover, although GRAMA contains a lengthy roster of records that are presumptively public, id. § 63-2-301(1)-(3) (Supp. 2007), the statute cautions that this list "is not exhaustive and should not be used to limit access to records," id. § 63-2-301(4).

¶15 GRAMA strives to accomplish its legislative goals by creating a government records classification system. The most general classification segregates public from nonpublic records.

GRAMA then creates three categories of nonpublic records: private, id. § 63-2-302 (2004); controlled, id. § 63-2-303; and protected, id. § 63-2-304. Only the private and protected categories of nonpublic records concern us here.

¶16 To assist a governmental entity with the task of classifying its records, GRAMA details attributes unique to each of the three nonpublic categories. While GRAMA identifies in detail many types of information and assigns classifications to them, GRAMA's taxonomy is not exhaustive. For example, investigative reports of sexual harassment complaints are not classified. See id. §§ 63-2-302 through -304. GRAMA anticipates that its inventory of records does not classify every governmental record and sets out procedures for classifying records that have escaped statutory classification. These classification procedures focus on properly identifying and balancing interests associated with a record. For example, if a record fits into more than one category, GRAMA authorizes a governmental entity to select one "by considering the nature of the interests intended to be protected and the specificity of the competing provisions." Id. § 63-2-305(1). To facilitate classification, GRAMA permits a governmental entity to divide a record into its public and nonpublic parts by redacting nonpublic content. Id. § 63-2-307. Moreover, to ease the burden of record classification, GRAMA does not impose upon a governmental entity a duty to classify a record unless "access to the record is requested," id. § 63-2-306(2), but it may reclassify or redesignate its records at any time, id. § 63-2-306(3).

## II. THE DISTRICT COURT OWED NO DEFERENCE TO THE COUNTY'S ADVANCE CLASSIFICATION OF SEXUAL HARASSMENT INVESTIGATIVE REPORTS

¶17 Although GRAMA does not classify sexual harassment investigative reports, the County's personnel policy relating to sexual harassment classifies them as "protected." Salt Lake County Personnel Policy & Procedure, 5730 Sexual Harassment 4.3.1 (2004). This categorical classification created by county policy, while permitted by GRAMA under Utah Code section 63-2-306(2) (2004), does not endow a specific report with a presumption that it should be withheld if requested. Unlike a governmental entity's classification of a type of record<sup>2</sup> containing information expressly classified by GRAMA, the County's classification of sexual harassment investigative reports represents, at most, a prediction of how a particular

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<sup>2</sup> GRAMA uses the term "[r]ecord series." Utah Code Ann. § 63-2-103(23) (Supp. 2007).

investigative report would be treated if a request were made to make it public.

¶18 To be sure, under some circumstances, most investigative reports concerning allegations of sexual harassment could qualify for nonpublic status under one or more provisions of GRAMA. For example, a report of an ongoing investigation "reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes." Id. § 63-2-304(9)(a) (2004). More plausible still is the possibility that a sexual harassment investigative report contains information that "constitute[s] a clearly unwarranted invasion of personal privacy, or [allow] disclosure [that] is not in the public interest." Id. § 63-2-304(25). Finally, one might even imagine a sexual harassment investigative report that "reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government . . . [and result in] disclosure [that] would interfere with enforcement or audit efforts." Id. § 63-2-304(9)(e). Still, despite the authority granted the County by GRAMA to classify the entire category of sexual harassment investigative reports in advance, it is certainly possible that none of these statutory provisions would justify withholding access to a particularly requested report.

¶19 When the County defended its denial of the newspaper's request for access to the report, it was not so much defending its decision on the Floros report as it was defending its classification policy for all sexual harassment reports. Thus, when the County cited the GRAMA provision exempting from disclosure a record that "constitutes a clearly unwarranted invasion of personal privacy" as a ground for denying the newspaper's request, it was claiming that all investigative reports of sexual harassment complaints qualify for this exemption. When the County contended that no one, not even those empowered to rule on the newspaper's appeals, should see the contents of the report, it confirmed that as far as it was concerned, its advance classification of sexual harassment investigative reports rendered unnecessary any additional GRAMA review. Faced with a GRAMA request for a particular sexual harassment report, the County could not deny access based solely on its advance categorical classification. Instead, GRAMA required the County to examine and evaluate the GRAMA status of the Floros report in the context of the interests relevant to its content alone. Thus, while some sexual harassment investigations may not have stirred suspicions of efforts to shield partisan public officials from scrutiny, the Floros investigation did, and

justifiably so. The County's reluctance to disclose the contents of the report to the Council merely reinforced this perception. By protesting any disclosure, however, the County was asserting that the contents of the Floros report were irrelevant to assessing the correctness of the County's classification. Only the merits of classifying all sexual harassment investigative reports as "protected" mattered. We take issue with this position as being incompatible with GRAMA.

¶20 The County's policy of classifying all sexual harassment investigative reports as "protected" would never be sufficient, standing alone, to justify denying a request for access to such a report. We agree that the assignment of a primary classification to a record series in advance of a record request is a prudent policy. Advance classification offers organizational structure that supports record retention and management practices. Advance classification may also provide an important starting point when a governmental entity is confronted with a request for all, or a significant part, of a record series, where passing judgment on each record individually would be impractical. Advance classification is, however, of little or no relevance when evaluating a request for the disclosure of a single record within a record series that does not bear an express GRAMA classification.

¶21 GRAMA does not permit the County to defend its denial of access with this simple syllogism: the County reasonably classified all sexual harassment investigative reports "protected"; the Floros investigative report concerned an allegation of sexual harassment; therefore the report is "protected."

¶22 As an alternative to classifying a record series, GRAMA authorizes a governmental entity to "designate" a classification for it. Id. § 63-2-306(1). When a governmental entity designates records, it assigns a primary classification based on how, in its experience, a majority of the records in the series would be classified should the occasion arise to classify them. Although the County chose to classify sexual harassment investigative reports instead of designating them, that choice conferred no greater presumption of the correctness of the record's status under GRAMA. The County presumably had the expertise to predict what classification a majority of sexual harassment investigative reports would bear but had no ability to predetermine how any particular report should be classified. That judgment could be made only after the County reviewed the content of the requested investigative report and took into account the competing interests of public access versus

restricted disclosure. A governmental entity's commitment to perform this important work of interest identification and balancing is essential if GRAMA's aims are to be realized. It is work that a governmental entity cannot sidestep by electing to classify a record series in advance, as contrasted to designating the record series.

¶23 By functionally merging the classification and designation of records we have not wholly deprived the two terms of any separate meaning. For example, a governmental entity's advance classification of a record series, as distinguished from designation, may be entitled to greater deference than its designation when the record series is comprised of records expressly classified by GRAMA. Sexual harassment investigative reports do not appear, however, within any statutory classification. Here, the County was required to conduct an individualized assessment of the Floros report, its primary classification notwithstanding.

### III. GRAMA REQUIRES THE COUNTY TO CONDUCT A CONSCIENTIOUS AND NEUTRAL ASSESSMENT OF THE FLOROS REPORT

¶24 When the County received the newspaper's request, it assumed the statutory responsibility to determine the report's classification status by taking into account the entire scope of GRAMA, including its expressions of legislative intent, its presumptions favoring access, and its mandate that when competing interests fight to a draw, disclosure wins.<sup>3</sup> This duty is reflected in GRAMA's requirement that denial letters contain citations to the provisions of the statute supporting the denial. It would be incompatible with a governmental entity's responsibilities under GRAMA to apply to a record request a review methodology which presumes that a requested record has been properly classified and then proceed to canvass GRAMA for statutory language that confirms its designation. Here, the County was required to conduct a conscientious and neutral evaluation of the report's GRAMA status without regard to

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<sup>3</sup> The policy of requiring disclosure of a record when "countervailing interests are of equal weight," found in GRAMA's statement of legislative intent, Utah Code Ann. § 63-2-102(3)(e) (2004), conflicts with the standard to be applied by courts hearing reviews of GRAMA rulings. Under this standard a court may order disclosure "if the interest favoring access outweighs the interest favoring restriction of access." *Id.* § 63-2-404(8)(a). We hold that the conflicting "outweighs" standard must yield to the clear and preeminent expression of legislative intent.

existing designations or classifications.<sup>4</sup> This obligation continues throughout the appeal process. If a governmental entity becomes aware that circumstances that contributed to the denial of a record request have changed during the appeal, or before another request is received for the same record, the legislative intent and statutory structure of GRAMA requires the entity to reassess the classification of the record and, if appropriate, alter its classification as permitted by section 63-2-306.

#### IV. GRAMA MANDATES THAT THE DESERET MORNING NEWS BE GRANTED ACCESS TO THE FLOROS INVESTIGATIVE REPORT

¶25 GRAMA does not contemplate adversarial combat over record requests. It instead envisions an impartial, rational balancing of competing interests. To be sure, a requesting party may disagree with the governmental entity over the classification of a record, but the overriding allegiance of the governmental entity must be to the goals of GRAMA and not to its preferred record classification. When a governmental entity follows this approach, the requesting party can be assured upon receiving a denial that the entity has honored the purpose and intent of GRAMA and that the grounds cited in the denial were not uncovered in a single-minded quest for reasons to turn away the record request.

¶26 Under the proper GRAMA evaluative regimen, a governmental entity must weigh competing interests in the first instance. Here, the County took a contrary view, insisting that GRAMA contemplated a preliminary review of the propriety of its initial classification of the Floros report without weighing interests. The County persuaded the district court to endorse this view. Having rejected the County's analytical approach, we reverse the district court ruling based on it.

¶27 We also conclude that the district court erred when it concluded that the newspaper should be denied the Floros report because its contents fell within the two GRAMA provisions cited by the County to justify its classification: a clearly unwarranted invasion of personal privacy and interference with an investigation. Utah Code Ann. § 63-2-304(9)(a), (25) (2004).

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<sup>4</sup> Cf. U.S. Dep't of State v. Ray, 502 U.S. 164, 173 (1991) (indicating that the purpose and plain language of the federal Freedom of Information Act, which also promotes access to public records, creates "the strong presumption in favor of disclosure [that] places the burden on the agency to justify the withholding of any requested documents").

A. The Floros Investigative Report Does Not Constitute a Clearly Unwarranted Invasion of Personal Privacy

¶28 GRAMA classifies private records into two categories. The first acquires its status by virtue of its inherently personal nature; for example, a record pertaining to medical treatment or eligibility for social welfare benefits. Utah Code Ann. § 63-2-302(1)(a) (Supp. 2007). This category is not at issue here.

¶29 The second private record category, the one in which the County seeks to place the Floros investigative report, includes "other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy." Id. § 63-2-302(2)(d).<sup>5</sup>

¶30 As we observed above, the content of an investigative report of a sexual harassment allegation could by its nature be expected to invade privacy. It is also possible that considerations of public interest might push aside concerns over even the most intimate, embarrassing, and humiliating episodes of human sexual behavior. GRAMA's private and protected classification of records that "constitute[] a clearly unwarranted invasion of personal privacy" does not sanction denying access to a record merely because it invades personal privacy. To qualify for nonpublic classification a record must not only invade personal privacy, it must do so in a "clearly unwarranted" manner. Id.

¶31 Many factors may contribute to a determination of whether an invasion of personal privacy is warranted. These include the central consideration here: whether elected public

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<sup>5</sup> GRAMA makes the privacy category available only for records that have been "properly classified by a governmental entity." Utah Code Ann. § 63-2-302(2). This is a puzzling and circular condition to impose on a record, the proper classification of which depends upon whether its disclosure constitutes a clearly unwarranted invasion of personal privacy. The County suggests that "properly classified" contemplates a "primary classification" process of the kind performed here. Moreover, the County implies that GRAMA's "properly classified" language requires a court to first examine and defer to its primary classification of the Floros report. While this statutory language remains an enigma to us, we are satisfied that it does not give us cause to defer to the County's primary classification of the Floros record.

officials failed to respond properly to sexual harassment that might, without the presence of possible administrative misconduct, meet the standard of "clearly unwarranted invasion of personal privacy." Id.

¶32 The County argues that it properly classified the investigative report as private under section 63-2-302(2) (d) because, as a matter of law, its disclosure would unnecessarily invade the privacy interests of the alleged victim, the alleged perpetrator, and other persons participating in the investigation. We disagree.

¶33 As we observed above, a record may not be withheld merely because its contents invade personal privacy. Instead, the invasion must be clearly unwarranted. The presence of this limiting provision inevitably calls on a governmental entity, when classifying a record, to consider matters other than whether and to what degree a record invades personal privacy. In the realm of GRAMA, these other matters are nothing more or less than the constitutional and public policy interests that GRAMA insists be placed on the scales that weigh whether or not a record ought to be made public. We therefore hold that section 63-2-302(2) (d) necessarily demands an expansive and searching evaluation of the interests that might make an invasion of personal privacy warranted. We further hold that the district court erred when it declined to gather and weigh relevant interests before accepting the County's classification of the Floros investigative record.<sup>6</sup> While the district court did not conduct a balancing of the interests, the record before us is more than sufficient to perform the task. We begin by examining the potential invasions of personal privacy that might be suffered should the investigative report be released.

¶34 Thirteen of the sixteen people who were interviewed for the investigative report were never identified by name or job description. The investigators referred to these individuals exclusively by aliases, a precaution that substantially

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<sup>6</sup> Our interpretation of the phrase "clearly unwarranted invasion of privacy" finds support in the United States Supreme Court's interpretation of identical language contained in the federal Freedom of Information Act. E.g., U.S. Dep't of State v. Ray, 502 U.S. 164, 177 (1991) ("Although the interest in protecting the privacy of the redacted information is substantial, we must still consider the importance of the public interest in its disclosure. For unless the invasion of privacy is clearly unwarranted, the public interest in disclosure must prevail." (internal quotation marks omitted)).

diminishes the risk of invading the personal privacy of third-party witnesses.

¶35 We are aware, as the County suggests, that it could be possible for a dedicated and enterprising person to derive the identities of one or more witnesses regardless of the precautions taken to preserve their anonymity. We also note that a breach in confidentiality might expose witnesses to unwanted attention. We even concede that it might be conceivable, but only remotely so, that the unintended disclosure of the identity of witnesses in the investigation of Mr. Floros might give pause to those who may be sought out for information in future investigations.

¶36 We conclude, however, that these hypothetical, untoward events are too improbable to merit assigning them weight on the side of the scales favoring withholding the report. Indeed, as the newspaper indicated in its argument to the district court, the record contains "no evidence to show that if the report is released that people in the office or in the public or anyone will be able to connect the dots and figure out who these people are." The newspaper further indicated that the County "couldn't figure out who the employees were that are being talked about under the alias[es]" in documents submitted to the district court. This endorsement of the effectiveness of the precautions undertaken by the investigators to preserve the anonymity of witnesses would likely inspire the confidence of those called upon to be witnesses in future investigations.

¶37 Unlike witnesses whose true names were not revealed in the report, the report referred to Ms. Rice, Mr. Floros, and Ms. Swensen by name. We do not consider, however, the disclosure of their identities to amount to a clearly unwarranted invasion of personal privacy.

¶38 Ms. Rice cannot reasonably argue that the release of the report would significantly implicate her personal privacy interests. As the district court indicated, Ms. Rice made the choice to disclose her identity and publicize the allegations against Mr. Floros. Several publicly available documents, including Ms. Rice's complaint filed in federal court, contain personal details of the same nature as the investigative report.

¶39 As public officials, Mr. Floros and Ms. Swensen cannot reasonably argue that release of the investigative report would generally constitute a significant invasion of their personal privacy. The accusations of misconduct contained in the investigative report primarily pertain to the performance of their official duties.

¶40 The investigative report certainly contains personal information that does not relate to official conduct, including details of the origin and development of the relationship between Ms. Rice and Mr. Floros. The release of this information may well be invasive and even embarrassing. In our judgment, however, the disclosure of this information to the public will likely provide relevant context in which to fairly evaluate the propriety of the official conduct of Mr. Floros and Ms. Swensen. We therefore turn our attention to the County's assertion that the district court correctly concluded the report was a protected record under section 63-2-304(9).

B. The Floros Investigative Report Does Not Qualify as a "Protected" Record so as to Prevent Interference with an Ongoing Investigation

¶41 We are not persuaded that the Floros investigative report merits classification as protected under the provision of GRAMA that shields from public access records that "reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes[] . . . [or] reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings." Utah Code Ann. § 63-2-304(9)(a)-(b) (Supp. 2007). We therefore part company with the district court's adoption of the County's argument that a goal of these provisions is the preservation of the integrity of future sexual harassment investigations, not just the Floros investigation, which had been completed by the time the newspaper requested the record. While the district court read GRAMA to justify restricting access to the report on this ground, we draw a different lesson from GRAMA's text.

¶42 Apart from section 63-2-304(9)(a), GRAMA addresses the subject of investigations in one other provision. Section 63-2-302(1)(e) classifies as "private"

records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

- (B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and
- (ii) after the meeting, if the meeting was closed to the public.

Id. § 63-2-302(1)(e).

¶43 This section of GRAMA governing the classification of investigations conducted in connection with Senate confirmation hearings tracks closely the classification standards for investigations conducted by other governmental entities cited by the County and the district court. It is clear to us that the text of section 63-2-302(1)(e) contemplates an evaluation for potential risk of interference with the investigation at hand-- "the investigation undertaken by the committee"--and not future confirmation investigations. The only way in which section 63-2-304(9)'s treatment of investigations differs from section 63-2-302(1)(e) is in its use of the plural "investigations."

¶44 As used in this section, "investigations" may be interpreted in two ways. When interpreted in a temporal sense, the word "investigations" imparts an intention to apply the statutory provision to investigations of the same type conducted in the future. This is the County's preferred interpretation and the one that the district court adopted. We find this interpretation to be in conflict, however, with the unambiguous language of section 63-2-302(1)(e) that limits application of record disclosure to the particular investigation to which the record relates. We adopt, therefore, the second and correct interpretation of "investigations," one that limits the possibility of interference to a then ongoing investigation undertaken for one of the five named purposes. It is the need to account for these multiple purposes for investigations that the plural form is used, not multiple future investigations.

¶45 Our textual interpretation is consistent with that of courts that have confronted and turned back identical alternate readings of "investigations" provisions. The clearest expression of the low regard in which the County's interpretation of the "investigations" is held appears in Badran v. United States Department of Justice, 652 F. Supp. 1437 (N.D. Ill. 1987), a case brought under the Freedom of Information Act. There, the district court rejected as "bewildering and indefensible" the government's efforts to restrict a woman's access to the documents in her immigration file because production might interfere with enforcement proceedings "against a person who

might some day violate immigration laws." Id. at 1440. As the court reasoned,

An agency may not assert the "enforcement proceedings" exception to the FOIA [under 5 U.S.C. § 552(b)(7)(A)] "when there is no enforcement proceeding then pending or contemplated." No court has ever held to the contrary. If an agency could withhold information whenever it could imagine circumstances where the information might have some bearing on some hypothetical enforcement proceeding, the FOIA would be meaningless; all information could fall into that category.

Id. (citations omitted) (quoting Coastal States Gas Corp. v. Dep't of Energy, 617 F.2d 854, 870 (D.C. Cir. 1980)).

¶46 Having been stripped of the statutory justifications advanced by the County and accepted by the district court for classifying the Floros investigation report as nonpublic, the report has acquired a public classification by default. Although we could end our inquiry at this point, we take time to note that the report earned its public status not solely because it did not meet the stated grounds for nonpublic designation but also because of the presence of significant, legitimate public interests favoring its disclosure. We now turn our attention to them.

#### V. THE PUBLIC INTEREST IS BEST SERVED BY DISCLOSING THE FLOROS INVESTIGATIVE REPORT

¶47 The Floros investigative report includes detailed findings concerning Mr. Floros's inappropriate sexual behavior. The contents of the report also fairly communicate to the objective reader, albeit by inference, a genuine question about the propriety of the manner in which Salt Lake County officials monitored their workplace and responded to evidence of sexual misconduct. We agree with the Deseret Morning News that the investigative report provides a window, opaque as that window may be, into the conduct of public officials that is not available by other means, including the summary report.

¶48 Cases from other jurisdictions lend support to the conclusion that the legitimate public interest in information regarding a public official's misconduct may outweigh the official's interest in preserving personal privacy. In Local

2489, AFSCME v. Rock County, 2004 WI App 210, 277 Wis. 2d 208, 689 N.W.2d 644, thirteen employees of the Rock County Sheriff's Office, who were disciplined for viewing "inappropriate images" on work computers, sought to prevent the release of "copies of reports generated by . . . [the] investigations." Id. ¶ 5. The employees argued that the Janesville Gazette should be denied access to the records, in part, because the public interest in "protecting the privacy and reputations of the employees" outweighed the public interest in disclosure. Id. ¶ 27.

¶49 Although Wisconsin's records access statute is different from ours, we find the Wisconsin court's discussion of the privacy rights of public employees useful. The court said, "[Though] the public's interest in not injuring the reputations of public employees must be given due consideration, . . . it is not controlling. When individuals become public employees, they necessarily give up certain privacy rights and are subject to a degree of public scrutiny." Id. ¶ 26. This is especially true when the "misconduct . . . 'allegedly occurred in the location where the public has entrusted [the employees] to work and during the performance of [their] public duties, and therefore should be more subject to public scrutiny.'" Id. ¶ 27 (quoting Linzmeier v. Forcey, 2002 WI 84, ¶ 28, 254 Wis. 2d 306, 646 N.W.2d 811 (alterations in original)). The Wisconsin court rejected efforts to keep the records private. It ordered the release of the records with the proviso that the names of the disciplined employees be redacted. Id. ¶ 27.

¶50 The Montana Supreme Court reached a similar conclusion in a case that involved allegations of sexual harassment and discrimination by a city mayor. Citizens to Recall Mayor James Whitlock v. Whitlock, 844 P.2d 74 (Mont. 1992). Although we note that the court considered the case in the context of Montana's constitutional right to privacy rather than a records access statute, we find the facts and larger policy considerations helpful.

¶51 The city retained an independent investigator to prepare a report about the mayor for the city council following allegations of the mayor's misconduct. Id. at 76. After a group of citizens sought release of the report, the council refused to do so because the mayor had invoked his right to privacy. Id. The Montana court disagreed and held that the citizens group should be able to access the report. Id. at 79. The court concluded that the mayor's expectation of personal privacy with regard to the report was unreasonable because he

is an elected official and as such is properly subject to public scrutiny in the performance of his duties. . . . When a person is elected to public office, the general public has . . . [the] right to be informed of the actions and conduct of their elected officials. . . . [T]he sexual harassment allegations against [the mayor] go directly to the mayor's, and another government official's, abilities to properly carry out their duties. Information related to the ability to perform public duties should not be withheld from public scrutiny.

. . . .

. . . [P]ublic officials cannot reasonably have as great an expectation of privacy as individuals who are not public servants.

Id. at 77-78. Moreover, the court concluded that "society will not permit complete privacy and unaccountability when an elected official is accused of sexually harassing public employees or of other misconduct related to the performance of his official duties." Id. at 78.

¶52 Like Montana and Wisconsin, we believe that the public interest in governmental accountability will often prevail over the interest of insulating an official from unwanted intrusion into sexually related conduct. The legitimate public interest in the release of the Floros investigative report provides a separate and significant basis for releasing it.

#### CONCLUSION

¶53 We conclude that government records are presumptively public under GRAMA, and thus, the County bears the burden of proving that it properly classified the investigative report as nonpublic. We hold that the County did not properly classify the investigative report as a private record under section 63-2-302(2)(d) because the public interest in the record's release outweighs the potential personal privacy intrusion suffered. We further hold that the County did not properly classify the investigative report as a protected record under section 63-2-304(9), an exception that should properly extend only to reasonably expected investigations rather than hypothetical ones.

Finally, we find legitimate public interest in releasing the report. Reversed and remanded.

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¶54 Chief Justice Durham, Associate Chief Justice Wilkins, Justice Durrant, and Justice Parrish concur in Justice Nehring's opinion.

## Darcy Goddard

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**From:** Darcy Goddard  
**Sent:** Thursday, July 10, 2014 11:53 AM  
**To:** David C. Reymann  
**Subject:** RE: Thank you for your enquiry  
**Attachments:** Sheriff's Office Fee Schedule 2013.pdf; SLCo Countywide Policy 2060.pdf; SAMPLE Public Booking Sheet.pdf

Dear David:

Further to the below, we received your client's request by e-mail dated July 8, 2014, that the following records be compiled and released to him under GRAMA:

"I would like to make a GRAMA request for booking photos/mugshots and the related booking information for all individuals booked from 6/1/2014 to 6/30/2014. Please provide the booking information in excel or text format, and the mugshots in jpeg format."

According to the Sheriff's Office, 2,702 people were booked into the jail between June 1 and June 30, 2014. The requested booking photos and booking information sheets are not formatted or maintained in a form that would enable a blanket search and mass download of responsive information to DVD. Instead, to comply with your client's request, the Sheriff's Office would need to:

- 1- Run a query to obtain the names of each of the 2,702 people booked into the jail between June 1 and June 30, 2014;
- 2- Manually input each person's name to pull up that person's booking photo;
- 3- Manually add the County's copyright designation;
- 4- Manually save each booking photo with the person's name and SO number;
- 5- Manually pull up and save each person's "public" booking sheet; and
- 6- Save the booking photos and booking sheets onto DVD for production.

Considering the above, I asked our records officer to estimate the time it would take to compile documents responsive to your client's request. She ran a test batch and was able to process 10 photos/booking sheets in 20 minutes, so an average of 2 minutes per photo/booking sheet. Assuming that level of efficiency, it appears your client's request would require approximately 90 hours of staff time (2,702 photos x 2 minutes/photo = 5,404 minutes; 5,404 minutes/60 minutes per hour = 90.07 hours). Assuming increased efficiency (or even just a "credit" for the time necessary to input the County's copyright designation), resulting in only 1 minute per photo/booking sheet, we are still looking at approximately 45 hours of staff time.

The Sheriff's Office fee schedule (copy attached) authorizes an "extensive records request research fee" of \$25.00/hour. Given the time and effort necessary to respond to your client's request, I think classifying it as "extensive" is fair (and would likely be upheld on appeal). Given the estimated staff times above, that would place our research fees in the range of \$2,250.00 (90 hours x \$25.00/hour = \$2,250.00) to \$1,125.00 (45 hours x \$25.00/hour = \$1,125.00). Even if we were to depart from the Council-approved \$25.00/hour "extensive" research fee—which, as discussed below, I am not entirely sure we can—and instead charged only the hourly rate of the least expensive employee capable of performing the searches and compiling the production, our fees would be in the range of \$1,237.50 (90 hours x \$13.75/hour = \$1,237.50) to \$618.75 (45 hours x \$13.75/hour = \$618.75), not including overtime.

Moreover, as you and I have discussed previously, the Salt Lake County Council has, since at least 2009, approved a \$1.00/photo fee for booking photos. Although it might be open to debate, as I understand the fee schedule, that is in

addition to the research fees. Salt Lake County Countywide Policy No. 2060 states, in pertinent part, "County agencies that have a fee schedule approved by the County Council shall charge fees approved by County Council." (Copy attached; emphasis added.) Thus, I do not think the Sheriff's Office has any discretion to waive that fee. Absent a Council-approved deviation from the fee schedule, that would add another \$2,702.00 to the fees associated with your client's request.

An alternative, and substantially less expensive, approach would be for us to produce just the "public" booking sheets (sample attached). To do so would, I think, respond adequately to your client's request for "booking photos/mugshots and the related booking information" and also satisfy Utah Code Annotated section 63G-2-201(8). Our records officer estimated that searching for and compiling just the booking sheets (which do include a photo, but not in the format your client prefers) would take an average of 25 seconds per booking sheet, so approximately 18.75 hours. That would place our research fees in the range of \$468.75 (at the Council-approved rate of \$25.00/hour) to \$257.81 (at \$13.75/hour, not including overtime). Because those records would not include separate "booking photos," per se, however, we would not be required to charge the Council-approved fee of an additional \$1.00/photo.

Please advise as soon as possible how you would like us to proceed. Because the anticipated research fees will exceed \$50.00, no matter which production format your client chooses, the Sheriff's Office will require pre-payment of its estimated costs.

We look forward to hearing from you.

Best regards,  
Darcy

**From:** David C. Reymann [mailto:dreymann@parrbrown.com]  
**Sent:** Tuesday, July 08, 2014 4:43 PM  
**To:** Darcy Goddard  
**Subject:** FW: Thank you for your enquiry

Darcy,

Kyle Prall has submitted a new GRAMA request (see below) for mug shots. In the hopes of heading off a fight over fees, I wanted to alert you and let you know that perhaps we can talk if the County intends to charge \$1 per photo to see if we can work something out.

Best,

David

**David C. Reymann** | Attorney | **Parr Brown Gee & Loveless** | A Professional Corporation  
101 South 200 East, Suite 700 | Salt Lake City, Utah 84111 | D: 801.257.7939 | T: 801.532.7840 | F:  
801.532.7750 | [dreymann@parrbrown.com](mailto:dreymann@parrbrown.com) | [www.parrbrown.com](http://www.parrbrown.com)

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**From:** Kyle Prall [mailto:kyle@citizensinformationassociates.com]  
**Sent:** Tuesday, July 08, 2014 10:49 AM

To: David C. Reymann  
Subject: Fwd: Thank you for your enquiry

----- Forwarded message -----

From: **Salt Lake County Sheriff's Office** <[webform@slsheriff.net](mailto:webform@slsheriff.net)>  
Date: Tue, Jul 8, 2014 at 11:47 AM  
Subject: Thank you for your enquiry  
To: [kyle@infofreedomllc.com](mailto:kyle@infofreedomllc.com)

Dear Kyle,

Thank you for your enquiry. One of our team members will contact you shortly. Below is a summary of your enquiry:

Summary of web form submission:

Your Name  
Kyle Prall  
Email Address  
[kyle@infofreedomllc.com](mailto:kyle@infofreedomllc.com)  
Case Number  
9593021  
Cell Phone Number  
[REDACTED]

Message

Hello, I would like to make a GRAMA request for booking photos/mugshots and the related booking information for all individuals booked from 6/1/2014 to 6/30/2014. Please provide the booking information in excel or text format, and the mugshots in jpeg format. Please contact me with any questions.



**Ralph Chamness**  
Chief Deputy  
Civil Division

**Lisa Ashman**  
Administrative  
Operations

**SIM GILL**  
DISTRICT ATTORNEY

**Jeffrey William Hall**  
Chief Deputy  
Justice Division

**Blake Nakamura**  
Chief Deputy  
Justice Division

December 22, 2015

**BY E-MAIL** [REDACTED]

Mark Allen  
[REDACTED]

**Re: Salt Lake County response to GRAMA request dated December 14, 2015**

Dear Mr. Allen:

Enclosed please find documents Bates stamped SLCo Allen GRAMA 0017-0105 produced in connection with your December 14, 2015, request under the Utah Governmental Records Access and Management Act, 63G-2-101, et seq. ("GRAMA"). These documents comprise the Mayor's "calendar for August 1st-Sept 1st 2013."

Documents Bates stamped SLCo Allen GRAMA 0017-0048 are printed copies of the Mayor's Outlook calendar as it presently exists in electronic form. Also provided (Bates stamped SLCo Allen GRAMA 0049-0105) are copies of the Mayor's calendar as it was printed and voluntarily maintained in hard copy in 2013. As we understand it, because this was done primarily to assist the Mayor in managing his daily schedule, calendars were generally not printed in hard copy on days when he was traveling or otherwise out of the office. Please also note that many of the Mayor's calendar items during the relevant time were maintained by his then-assistant Heather Davis. Ms. Davis left County employment over a year ago and we have confirmed with the County's Information Services Division ("IS Division") that Ms. Davis' electronic calendar was deleted in the ordinary course.

Not included in this GRAMA response are the following documents you requested:

1. "All e-mails incoming or outgoing related to [the Mayor's] travel overseas." Assuming you intended the phrase "travel overseas" to refer to an August 2013 trip to Switzerland, this request unreasonably duplicates your and Eldon Parke's earlier GRAMA request, as revised by you by e-mail on December 1, 2015, to which we responded on December 9, 2015. Responsive documents have already been provided. *See* Utah Code Ann. § 63G-2-202(8)(a)(iv).

2. “[I]nvoices [and] receipts for the trip.” Assuming you intended the phrase “the trip” to refer to an August 2013 trip to Switzerland, this request unreasonably duplicates your GRAMA request dated December 10, 2015, to which we responded on December 11, 2015. Responsive documents have already been provided. *See id.*
3. E-mail messages of Karen Lowe. Ms. Lowe left County employment in December 2014. We confirmed with the County’s IS Division that Ms. Lowe’s e-mail messages were deleted in the ordinary course.
4. “PAC reports for Mayor Ben McAdams for expenses paid for all August travel to Switzerland” and “[a] copy of PAC filings with the LT.[sic] Governor’s office for in-kind contributions of any corporation or individual in excess of \$50.” As noted in your request, financial disclosures for the Mayor’s leadership PAC are filed not with the County, but with the Utah Lieutenant Governor’s Office. The County thus does not have records responsive to this request. The documents you seek are, however, publicly available and can be searched on-line at <http://disclosures.utah.gov/Search/PublicSearch>. *See id.* at § 63G-2-204(3)(b)(iii).

The remainder of your requests pertain to information, rather than documents, such as your demand for the Mayor to “identify the purpose of the trip [and] who from UTA the mayor was traveling with” or “who is responsible for [PAC] filings.” GRAMA contemplates only the release of “records,” as defined by statute. *See id.* at § 63G-2-103(22). The County is not required to “create a record,” nor must it “compile, format, manipulate, package, summarize, or tailor information” to fulfill a request. *Id.* at § 63G-2--202(8)(a)(i)-(ii).

Please note that certain information in the produced documents has been redacted as required by County ordinance. There is no charge to fulfill your request.

You have the right to appeal this determination to Sarah Brenna, the County’s newly designated Chief Administrative Officer for Appeals. Appeals must be made in accordance with Salt Lake County Policy 2040, a copy of which was produced to you on December 9, 2015.

Please feel free to contact me if you have any questions.

Best regards,

/s  
\_\_\_\_\_  
Darcy M. Goddard  
Deputy District Attorney

Enclosures

