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GRAMA v. Discovery – The Right Hand Doesn't Know What the Left Hand is Doing

I. Who is this GRAMA person and why do we care about her?

   a. GRAMA Overview
      i. General Rule – all records are open and public (OK, with a couple of limited exceptions)
      ii. State and local governments need to classify their records and set up retention schedules
      iii. There are requesting procedures, fees and appeals
   b. GRAMA Case Law

II. Okay, but we're prosecutors and we have our own discovery rules.

   a. GRAMA and discovery – discovery and GRAMA

III. Other Stuff

OVERVIEW OF GRAMA

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

I. GRAMA has three main elements.

A. Establishes a general rule that all government records are public, with limited exceptions.

B. Requires state and local governments to classify their documents as either public or one of three kinds of non-public records and schedule records for retention.

C. Establishes records requesting procedures, fees, and appeals.

II. General rule that all records are public.

A. Has been the law in Utah since before statehood.

B. "Public" is always the default position. §§ 63G-2-201(2); 63G-2-301(4); 63G-2-306(2).

C. Exceptions:

1. If another state statute specifically classifies a record or record series as non-public, that specific law trumps the general rule of openness (example – state law makes juvenile court records confidential). § 63G-2-201(2).

2. If there is no specific state statute, then GRAMA recognizes that a record can be kept confidential if releasing the record "constitutes a clearly unwarranted invasion of personal privacy". § 63G-2-302(2)(d).

III. What's a record?

A. Government records are subject to GRAMA regardless of format – papers, books, photographs, maps, electronic files, audio tapes, video tapes, computer data, e-mail, micro-film – as long as it is possible to make a duplicate of the record. § 63G-2-103(22)(a).

B. A document is subject to GRAMA if the government receives, owns or keeps it – it is not necessary that the document be an official government record nor that it is required by law or business practice. § 63G-2-103(22)(a)(i); Conover v. Board of Education, 267 P.2d 768 (1954).

C. GRAMA considers some materials as non-records and therefore not subject to release or classification:

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

IV. Four classifications of records.

A. Public records – the majority of government records and the official default position. GRAMA lists some records that are always public:

1. Laws, public employee salaries and other job-related information, final opinions and decisions, legal opinions, open meeting minutes, land records, initial police reports, payments to contractors. § 63G-2-301(2).

2. The list of public records is obviously not exhaustive, because of the default position that everything is public, with exceptions.

3. A record that is not public can become so if the person who is the subject of the record consents in writing to public release.

B. Private records – documents containing information about a specific person, where that person retains a privacy interest. Examples specifically mentioned in GRAMA include:

1. Medical data, unemployment or welfare eligibility, Social Security numbers, library records, home addresses and other personal identifiers, financial information, any information about a person where release would constitute a "clearly unwarranted invasion of personal privacy." § 63G-2-302.

2. Home addresses and other identifiers for "at-risk" government employees (judges and law enforcement) can be made private at the request of those employees. § 63G-2-303.

C. Controlled records – documents in a very narrow category that consists of medical or mental health information where the doctor or government says, "do not release the information to the subject of the records" (the patient). § 63G-2-304.

D. Protected records – documents about governmental operations where the government retains a privacy interest. Examples specifically mentioned in GRAMA include:

1. Trade secrets, test questions and answers (such as civil service or university), real property values before a sale is completed, information that would jeopardize life or safety, attorney-client records, minutes of closed meetings, information concerning government audit or investigation procedures, material relating to jail security. § 63G-2-305.

V. Requesting process.

A. A records request and the government's response are governed by GRAMA.

1. A local government can establish its own records request and response procedures by ordinance, but these cannot materially depart from GRAMA requirements. § 63G-2-701.

B. A requestor needs to identify with specificity the material wanted and needs to give his or her name, phone number and address. The government can require that the request be in writing. § 63G-2-204(1).

C. The government is required to respond within a specific deadline – usually within ten days after the request. § 63G-2-204(3).

1. The deadline can be shortened to five days if the requestor is a reporter and needs the record for publication. § 63G-2-204(3).

2. The deadline can be extended (but not for an unreasonable or lengthy period) if the request is for a voluminous amount of records, the records are being currently used by the government, responding to the request requires extensive editing, or legal advice is needed to respond to the request. § 63G-2-204(5).

D. The government can charge the requestor for the costs of duplication, including some employee time and indirect costs. The government can not charge if the requestor only wants to view the records or will do his or her own copying. § 63G-2-203.

E. If the records request is for material that is part public and part non-public, the government is required to grant the request and edit out materials that are non-public. § 63G-2-308.

F. If the government declines, in whole or in part, the records request, it must do so in writing, listing the reasons for non-disclosure (citing a statute) and explaining the process for appeal of that denial. § 63G-2-205.

G. Appeal goes to the county's "chief administrative officer" and then to the State Records Committee. A county can adopt an ordinance setting its own appeal process (for instance, in Salt Lake County, an appeal goes to an internal administrative board and then to the County Council). Any further appeal is to District Court. § 63G-2-401.

VI. Records Retention.

A. GRAMA requires that local governments adopt a retention schedule for the various records they hold – this is used to determine when records are no longer necessary and may be destroyed. § 63G-2-701(1).

B. GRAMA does not establish any specific retention schedule requirements, but a county should retain records for a reasonable time based on business need, potential litigation, and similar considerations. (Without any specifics regarding retention in the statute, a local government would be well-advised to adopt its own retention standards.)

C. A county is required to file its retention schedules with State Archives and if the State thinks a county's retention schedule is too short, it may require the county to forward the particular record to the State for additional retention. § 63G-2-701(1)(g).

VII. Penalties and Remedies.

A. A government officer or employee may be subject to prosecution for a class B misdemeanor for intentionally disclosing confidential documents, for improperly gaining access to or using confidential documents, or for refusing to disclose a record which should be available under GRAMA. § 63G-2-801.

B. Civil enforcement of GRAMA includes injunctive relief and attorneys' fees. It is a defense to civil liability for improper release of records under GRAMA if a government employee reasonably relied on a records requestor's apparent evidence of legal authority to obtain a record. §§ 63G-2-802; 63G-2-803.

C. County employees are subject to employment disciplinary action for GRAMA violations. § 63G-2-804.

VIII. "Step Two" in the GRAMA process.

A. GRAMA specifically provides that, even if a record is legitimately classified as non-public, the government may still decide to disclose the record. § 63G-2-201(5).

B. Utah court decisions and decisions of the State Records Committee have heavily relied on this second step in the process and have held that non-public records should still be released if the public interest in disclosure outweighs the privacy interests in non-disclosure.

C. Interest from the news media, in a matter of broad public interest or controversy, may be sufficient to actually require, not just permit, disclosure of an otherwise confidential record.

D. Deseret News v. Salt Lake County, 182 P.3d 372 (2008): The Utah Supreme Court recently issued a decision which very strongly required the County to disclose records regarding an employee disciplinary matter.

1. The Court acknowledges a legislative intent that records be open and public.

2. The County should have examined the individual investigative record at issue and should have made its classification decision based on the content of that record, not a blanket classification decision, made in advance and generally applicable to all such records.

3. GRAMA requests should not be adversarial combat, but an impartial balancing of public interests. Government's goal should be to achieve the goals of GRAMA, not to support its own preference in classification.

4. Misconduct by public employees in the government workplace is a matter of strong public interest. Employees have little or no personal privacy interest in such episodes. Government accountability outweighs personal privacy interests.

GOVERNMENT IN THE SUNSHINE

UTAH CASE LAW

GRAMA and Open Meetings

A. PRE-GRAMA DECISIONS:

1. Conover v. Board of Education: *Meeting Minutes – When is a document covered?*

A citizen requested copies of the minutes of a meeting of the Board of Education of the Nebo School District. At issue is whether the minutes were considered available to the public before they had been approved by the school board in a subsequent meeting. Held: The minutes of a board meeting may be made available to the public as soon as they are transcribed (for instance, from short-hand) and before they have been formally approved by the Board. A document might be considered open and available to the public whenever the government holds the document as a "convenient and appropriate method of discharging public duties, regardless of whether it is expressly required by a specific statute."

Conover v. Board of Education, 267 P.2d 768 (Utah 1954).

2. Redding v. Brady (Redding I): *Privacy standards for public employees – The balancing test.*

The editor of a student newspaper at Weber State University requested the names of college professors and other staff along with their specific, gross salaries. College administration offered only salary ranges. The specific salary of a public employee is a public record. While the law protects documents which involve an individual's right of privacy, a public employee waives much of that privacy by accepting employment with the government. Public interests and privacy interests need to be balanced. (This might be a constitutional right.)

Redding v. Brady, 606 P.2d 1193 (Utah 1981).

3. Redding v. Jacobsen (Redding II): *Statutory rights versus constitutional rights.*

A year later, the same student editor of a college newspaper requested specific information regarding the salaries of school staff as explained in Redding I; however, in the interim, the Utah Legislature had changed the law and adopted a statute specifically classifying professors' salaries as not public. No competent or applicable case law establishes a constitutional right for public access to government records – all prior cases on the subject have

been based on a right created by statute. The First Amendment guarantees regarding free speech and press do not grant a constitutional right to government documents; therefore, changing the statute regarding public access may effectively preclude that access. (Not a constitutional right after all.)

Redding v. Jacobsen, 638 P.2d 503 (Utah 1980).

4. **Society of Professional Journalists v. Briggs**: ***The constitutional right to records access (or maybe not).***

The lawsuit was initiated regarding alleged misconduct by Daggett County elected officials, involving interference with the county assessor's statutory duties. The parties negotiated a settlement agreement and the Society of Professional Journalists (now there's an oxymoron) sought access to the settlement document. Based on slim case law precedent, the federal district court found that there may be a constitutional right of public access to government documents. The court, however, additionally found that "the Constitution is not, however, a Freedom of Information Act," and that under some circumstances public access may be properly limited.

Society of Professional Journalists v. Briggs, 675 F.Supp. 1308 (D.Utah 1987).

5. **Barnard v. Utah State Bar**: ***What's a state agency for public records access?***

A member of the Utah bar requested specific salary and benefits information regarding named bar employees. The bar offered salary ranges and a description of fringe benefits. Any right of access to documents depends on whether the agency at issue is a "public office" or "state agency" within the meaning of applicable statutory terms. Those terms do not include the Utah State Bar and it is not a public or state agency subject to public records requests. The mere fact that an organization is officially recognized by state statute does not make it a state agency.

Barnard v. Utah State Bar, 804 P.2d 526 (Utah 1991).

6. **State v. Archuleta**: ***Constitutional right to public access – Limited by criminal defendant's right to a fair trial.***

Archuleta was charged and prosecuted for a gruesome torture homicide in which the court, upon the prosecution's motion, sealed all records at the pre-trial stage. The Society of Professional Journalists and Deseret News intervened claiming access. The court found that there might be a constitutional right to public access where there has been (1) a tradition of access in the past and (2) public access plays a significant positive role in the government process. This constitutional right is not, however, absolute and may be limited by a criminal

defendant's right to a fair trial. The court found that the two conditions are met regarding public access to criminal preliminary hearings but found that the documents at issue were so sensitive and sensational that public release might affect the defendant's rights. Further, the information presented in the preliminary hearing may later be found inaccurate or inadmissible. There is no right to public access regarding objects, tangible items or similar materials – only documentary materials are covered.

State v. Archuleta, 852 P.2d 234 (Utah 1993).

B. GRAMA RECORDS DECISIONS:

1. Graham v. Davis County Solid Waste Management District: *Charging fees for GRAMA requests.*

Residents of Davis County requested information regarding a contract between the district and a private provider; the district told Graham that the request would require significant work to reply and would generate charges of $280. Graham brought suit regarding the fees. The court found that GRAMA balances the public's right to access against "the government's interest in operating free from unreasonable and burdensome records requests." Further, the law protects government agencies from overwhelming requests by allowing reasonable fees which reflect the government's cost and inconvenience in responding to the request. When a request requires a government to collect and assemble numerous documents from various sources and put those documents in order, the government is entitled to charge a fee to "compile a record in a form other than that normally maintained by the government entity" (63G-2-203(2)). Fees must be reasonable and the government cannot charge to simply retrieve a single document out of a filing cabinet. The government has the burden to show that fees are reasonable. It is good policy for the government to explain fees beforehand so a requestor can modify or withdraw the request. The court found the $20 per hour fee charged was reasonable.

Graham v. Davis County Solid Waste Management District, 979 P.2d 363 (Utah App. 1999).

2. State v. Spry: *Prosecutor's duties in criminal discovery.*

Spry was charged with unlawful possession of a controlled substance. Her motor vehicle, after being impounded by the police, was destroyed by fire. Based on this and allegations that she was "roughed up," the police department Internal Affairs Division held a hearing regarding her complaint. The defendant maintained that during the discovery phase of her criminal prosecution, the prosecutor should have given her access to records regarding the Internal Affairs' investigation and the prosecutor should have recovered those documents from the police department pursuant to GRAMA. The court held that such disclosure is not the prosecutor's responsibility under the rules governing criminal discovery.

State v. Spry, 21 P.3d 675 (Utah App. 2001).

3. **Young v. Salt Lake County**: ***GRAMA appeal period – Court's jurisdiction – The effect of a more specific records statute.***

Young was terminated from employment with the sheriff's office and, in preparation for a grievance appeal, he requested the county provide records of other disciplinary actions regarding other deputies who had been investigated or disciplined for similar misconduct. The sheriff initially failed to respond timely to Young's records request and the county argued that his 30-day appeal period had lapsed; however, the sheriff finally answered the records request late, with a written denial. The court found that the appeal period ran from the late answer, not from the original "request-deemed-denied" date. It is not a violation of GRAMA for the government to make a late response to a records request. When a court reviews a record pursuant to a GRAMA appeal, the court is not bound by GRAMA's limitations and balancing requirements which apply when a court considers a subpoena for releasing non-public records under Section 63G-2-207. When a more specific statute regarding access to a specific type of government record prohibits or limits disclosure, that specific statute prevails, trumps GRAMA, and the GRAMA "balancing test" is not required.

Young v. Salt Lake County, 53 P.3d 1240 (Utah 2002).

4. **State v. Maestas**: ***A more specific records statute trumps GRAMA – Subpoenas under GRAMA.***

The defendant in an aggravated robbery prosecution was retried and the prosecutor sought to admit the pre-sentence reports prepared for the first trial as evidence of the defendant's guilt in the retrial. The statutes governing the public nature of a pre-sentence report establish specific limits regarding public release but also classify such reports as "protected" under GRAMA. The court examined the five statutory conditions under which a court may release a protected record pursuant to a subpoena and found that, in this case, not all five requirements or conditions were satisfied. Therefore, the court was not permitted to release the pre-sentence report and the prosecutor could not use it as evidence in the retrial.

State v. Maestas, 63 P.3d 621 (Utah 2002).

5. **Utah Department of Public Safety v. Robot Aided Manufacturing Center**: ***A more specific records statute trumps GRAMA.***

A private business sought access to records regarding all Utah drivers who had received moving vehicle citations during each month; this information would then be provided to insurance companies. The Driver's License Division declined to provide the records as requested due to classification under applicable driver license statutes. The court examined the interplay between GRAMA and a more specific statute and found that the GRAMA rule of openness is always trumped by a more specific statute that limits public access to a government record. In some cases, the GRAMA rule of openness can be reconciled with another statute;

however, when that is not possible, the other specific statute controls. It is not necessary that the other applicable statute specifically state it trumps GRAMA.

Utah Department of Public Safety, Drivers' License Division v. Robot Aided Manufacturing Center, Inc., 113 P.3d 1014 (Utah App. 2005).

6. **Jensen v. Utah:** ***The federal courts will give deference to GRAMA.***

In examining a subpoena regarding discovery in the Parker Jensen chemotherapy case, the U.S. Magistrate (Paul Warner) gave deference to Utah's GRAMA and held that the federal court would not grant a subpoena seeking documents classified as non-public under GRAMA until it had gone through the subpoena standards and limitations set out in GRAMA Section 63G-2-207.

Jensen v. Utah, 247 F.R.D. 664 (D.Utah 2007).

7. **Deseret News v. Salt Lake County:** ***GRAMA purpose clause and balancing test – Invasion of privacy – Privacy standard for public employees.***

The county hired outside attorneys to conduct an investigation regarding allegations of sexual harassment and management cover-up in the county clerk's office. The attorneys conducted interviews and prepared an extensive report regarding their findings; pursuant to county personnel policies, such reports were generically classified as either protected or private records. The court examined GRAMA's provisions regarding public policy and legislative intent and found a strong acknowledgment of a right to public access and the balancing of interests favoring open disclosure of a document compared to interests which favor that document's confidentiality. The court found that the county should have examined the individual investigative report and made a GRAMA classification decision based on that report's content, not based on the generic classification in the personnel policies. The government's response to a GRAMA request should not be "adversarial combat;" rather, the government's goal should be to achieve GRAMA's purpose of open and public information and balancing of public interests. While sexual matters often involve a strong expectation of privacy, misconduct by public employees in a government workplace is a matter of public interest in which employees have no significant personal privacy interests. Government accountability, especially where there are allegations of a management cover-up, outweigh personal privacy interests.

Deseret News v. Salt Lake County, 182 P.3d 372 (Utah 2008).

8. **Southern Utah Wilderness Alliance v. The AGRC:** ***Records are presumptively public – discussion of GRAMA's application to attorney work product and attorney-client privilege – GRAMA "drafts."***

SUWA requested records from the AGRC regarding the status of R.S.2477 roads kept on AGRC's GIS system. The state refused to release the records based on attorney-client privileges and other reasons. In requiring the state to release the records, the court rejected the state's argument that statutes relating to AGRC records do not specifically provide that those records will be considered "public" under GRAMA; the court responded with the GRAMA general rule that all records are presumptively public and this presumption is trumped by a specific state statute which provides that a record is not public. Regarding attorney work product, the court held that, in accordance with the rules of civil procedure and evidence, materials protected under this exception must have been prepared solely for litigation and not in the ordinary course of business. Further, to be protected, the record must contain "core" mental impressions or legal theories. The R.S.2477 data, though used by the AG for litigation purposes, was not prepared solely for litigation but in the ordinary course of business based on the AGRC enabling legislation. In regards to the attorney-client privilege, the court recognized that simply having an attorney-client relationship, by itself, is not sufficient to invoke the privilege. Rather, the information is given to the attorney by the client in order to secure legal advice and is given in confidence; the court found these two requirements were not met because GIS files were received from a variety of parties and were created for broad use by many agencies and private parties, not just for the AG. Lastly, the court held that the GIS records were not GRAMA "drafts," as they were treated as "records" by the AGRC statute and had been circulated broadly beyond just the originators and their supervisors. The GRAMA basis for denial based on duplicate records requests applies only to requests made to the same government agency, not to a different agency.

Southern Utah Wilderness Alliance v. Automated Geographic Reference Center, 200 P.3d 643 (Utah 2008).

9. **Schroeder v. Utah Attorney General:** ***Constitutional protections do not create a separate classification of records– a note or summary of evidence may be properly considered attorney work product if GRAMA standards are met – attorney work product and client confidences are subject to the GRAMA balancing test.***

The Utah Attorney General's office was involved in an investigation of a non-profit entity's finances when it was alleged that the entity's funds were diverted to a city official's re-election campaign. The AG subpoenaed and received the entity's bank records, but later closed the investigation without further action. Mr. Schroeder filed a GRAMA request with the AG seeking the bank records, a summary of the bank records prepared by an AG investigator, and a 'Post-It' note on which the investigator had written instructions from the prosecutor. The AG resisted the GRAMA request as to the bank records and summary citing the Utah Constitution's prohibition on unreasonable searches and seizures (Art 1, sec 14). The Utah Supreme Court held that, as long as the records were received by the AG based on a valid search warrant or subpoena, the constitutional protection was not at issue and the matter of disclosure would be resolved by the terms of GRAMA, including its exemptions and protections. The court held that

the summary and the 'Post-It' note were indeed protected by attorney work product principles as provided by GRAMA. However, the court also held that access to all requested records was also subject to GRAMA's 'balancing test,' which provides that a record which is properly classified as confidential might still be subject to release if the interests favoring public disclosure outweigh the interests favoring confidentiality. In this case the balance favored disclosure, including attorney work product, based in part on the fact that the State has dropped the prosecution years earlier.

Schroeder v. Utah Attorney General, 2015 UT 77 (Sup. Court 2015)

Effective 5/10/2016

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-2-207 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

Rule 16. Discovery.

(a) Except as otherwise provided, the prosecutor shall disclose to the defense upon request the following material or information of which he has knowledge:

(a)(1) relevant written or recorded statements of the defendant or codefendants;

(a)(2) the criminal record of the defendant;

(a)(3) physical evidence seized from the defendant or codefendant;

(a)(4) evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment; and

(a)(5) any other item of evidence which the court determines on good cause shown should be made available to the defendant in order for the defendant to adequately prepare his defense.

(b) The prosecutor shall make all disclosures as soon as practicable following the filing of charges and before the defendant is required to plead. The prosecutor has a continuing duty to make disclosure.

(c) Except as otherwise provided or as privileged, the defense shall disclose to the prosecutor such information as required by statute relating to alibi or insanity and any other item of evidence which the court determines on good cause shown should be made available to the prosecutor in order for the prosecutor to adequately prepare his case.

(d) Unless otherwise provided, the defense attorney shall make all disclosures at least 14 days before trial or as soon as practicable. He has a continuing duty to make disclosure.

(e) When convenience reasonably requires, the prosecutor or defense may make disclosure by notifying the opposing party that material and information may be inspected, tested or copied at specified reasonable times and places. The prosecutor or defense may impose reasonable limitations on the further dissemination of sensitive information otherwise subject to discovery to prevent improper use of the information or to protect victims and witnesses from harassment, abuse, or undue invasion of privacy, including limitations on the further dissemination of videotaped interviews, photographs, or psychological or medical reports.

(f) Upon a sufficient showing the court may at any time order that discovery or inspection be denied, restricted, or deferred, that limitations on the further dissemination of discovery be modified or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(g) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

(h) Subject to constitutional limitations, the accused may be required to:

(h)(1) appear in a lineup;

(h)(2) speak for identification;

(h)(3) submit to fingerprinting or the making of other bodily impressions;

(h)(4) pose for photographs not involving reenactment of the crime;

(h)(5) try on articles of clothing or other items of disguise;
(6) permit the taking of samples of blood, hair, fingernail scrapings, and other bodily materials which can be obtained without unreasonable intrusion;

(7) provide specimens of handwriting;

(8) submit to reasonable physical or medical inspection of his body; and

(9) cut hair or allow hair to grow to approximate appearance at the time of the alleged offense.
Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given to the accused and his counsel. Failure of the accused to appear or to comply with the requirements of this rule, unless relieved by order of the court, without reasonable excuse shall be grounds for revocation of pre-trial release, may be offered as evidence in the prosecutor's case in chief for consideration along with other evidence concerning the guilt of the accused and shall be subject to such further sanctions as the court should deem appropriate.

children's JUSTICE CENTER

SALT LAKE COUNTY

SIM GILL
DISTRICT ATTORNEY

Ralph Chamness
Chief Deputy
Civil Division

Lisa Ashman
Administrative
Operations

Jeffrey William Hall
Chief Deputy
Justice Division

Blake Nakamura
Chief Deputy
Justice Division

_____ 2017

Police Chief
Police Department Address

SUBJECT: GRAMA request regarding Officer _____

Mr. Chief _____,

Pursuant to Utah Code §63G-2-206(1)(b), the Salt Lake County District Attorney's office is requesting all records held by _____ Police Department (public, private, controlled, or protected) involving Officer _____ as outlined below, from his hire date to present. As of today _____ is either a witness or a victim in one hundred one separate criminal cases which have been sent to our office for screening of criminal charges. Many of those cases have been filed and are at various procedural stages.

Criminal prosecutors have an affirmative duty to disclose evidence favorable to a defendant. See Brady v. Maryland, 373 US 83 (1963). That duty extends beyond exculpatory evidence in a specific case and includes impeachment evidence against witnesses offered during the prosecution's case in chief. See United States v. Bagley, 473 U.S. 667, 676 (1985). Prosecutors are ultimately responsible for collecting, evaluating, and providing this *Brady* evidence to defendants, even if law enforcement agencies have not informed prosecutors the materials exist. See Kyles v. Whitley, 514 US 419, 438 (1995). The records requested below are requested because they are necessary to the resolution of prosecution proceedings and investigations the District Attorney is handling. As you are aware, if impeachment evidence is not provided to the defense as explained above criminal cases can be dismissed and convictions reversed on appeal.

Based on the requirements of section 63G-2-206, please consider this letter as a written assurance, as provided in subsection 63G-2-206(2)(a). The District Attorney's Office represents that the records requested regarding _____ are necessary to the District Attorney's duties and functions, that the records will be used for criminal investigation and enforcement purposes which are similar to the purposes for which the records were originally obtained, and that the use of the records by the District Attorney produces a public benefit greater than or equal to the privacy rights of the subject of the record.

It has come to the attention of the District Attorney that _____ has conducted himself in a manner that has led the _____ Police Department to suspect he may have a character for untruthfulness, may have a motive to misrepresent, may be biased, or may hold prejudice(s). The District Attorney hereby requests a copy of all records in possession of the _____ Police Department to that effect. The request extends to records of expressed opinion or reputation regarding _____ character, as well as records of specific instances of conduct indicative of such. If Police Chief _____ or a designee has compiled one or more investigative reports or memos regarding Officer _____, those may consist of, include, or refer to the records requested herein, and should be supplied to the District Attorney pursuant to this request.

Along with each record, please inform the District Attorney's office of the record's classification as public, private, controlled, or protected. Pursuant to Utah Code §63G-2-206, our office acknowledges it will be subject to the same restrictions on disclosure absent a more specific court rule or order, state statute, federal statute, or federal regulation. Our office will both inform the department of any records request we receive regarding Officer _____ records and will vigorously defend each record's meritorious classification.

Please feel free to contact _____ of our office with any questions, comments, or concerns.

Sincerely,

_____
Deputy District Attorney

DISTRICT ATTORNEY
SALT LAKE COUNTY

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