Division of Archives and Records Service

Records Access Essentials for Government Employees

Government Records Access and Management Act (GRAMA) Certification Training

Contents

Records Access Essentials for Government Employees

This training will assist records officers in complying with GRAMA requirements when fulfilling records requests and teach them how to find and use the provisions of GRAMA. This training will cover those provisions of GRAMA needed to fulfill records requests.

It is recommended that records officers taking this training download a copy of GRAMA (Utah Code 63G-2) to follow along in the training and mark up important provisions.

The State Archives offers additional training covering other GRAMA provisions and on issues of records management. These training opportunities can be found on the State Archives website.

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Module 1: General Provisions

Section 1.1 Legislative Intent 63G-2-102

The Government Records Access and Management Act, GRAMA, governs access to government records in Utah. GRAMA is designed to protect both privacy and transparency in government. It creates and describes a classification system within which specific records can be identified so that appropriate access can readily be determined. It establishes a process to appeal the denial of access.

The law begins with a statement that the Utah Legislature intends to balance the public's right to access information about the conduct of public business with individuals' rights of privacy in relation to personal information the government gathers about them. It also recognizes the need for the government to restrict certain records for the public good.

> **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.

The opening paragraphs further state legislative intent to:

- promote the public's right of easy and reasonable access to public records;
- specify the conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access;
- prevent abuse of confidentiality by governmental entities;
- provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and consistent with nationwide standards of information practices;
- favor public access when countervailing interests are of equal weight; and
- establish fair and reasonable records management practices.

Government record officers should consider these objectives when making decisions about whether to provide access to government records.

Section 1.2 Definitions 63G-2-103

Definitions provide the legal meaning of terms used within the law, and records officers should refer to them when unclear on the context in provisions. Records officers should know a few important definitions readily.

Record, 63G-2-103(22)(a)

To clarify the extent of the law, GRAMA defines a "record." The definition of a record is broad. It includes documentary materials—books, letters, documents, papers, and plans, as well as photographs, recordings and electronic data. GRAMA states that a record is information that is "prepared, owned, received, or retained" by government. It also must be reproducible. Format is not a factor; content, not format, is what is important in determining a record.

> **63G-2-103. Definitions.**
> . . . . (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

Record does not mean, 63G-2-103(22)(b)

GRAMA further clarifies the extent of the law by defining what a record is not. It lists such examples as copyrighted material, propriety software, junk mail or commercial publications, collections in public libraries, and more. It reaffirms that information not related to government business or not "prepared or received" in an official capacity is not a record.

> **63G-2-103. Definitions.**
> . . . .(22) (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 . . . .
> (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;

Temporary drafts are not records. A temporary draft is information gathered or prepared and incorporated into a final product or report. The word temporary is the key. A draft retained in a file over time cannot qualify as temporary.

Classification, 63G-2-103(3) and Designation, 63G-2-103(7)

GRAMA establishes records classifications. “Private” and “controlled” records protect individual privacy. “Protected” records restrict access for the public good. GRAMA also recognizes that access to some records may be restricted by another law or statute.

> **63G-2-103. Definitions.**
> . . . . (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).

Classification is the process of identifying the access rights based on the content of the record, and records must be classified in response to a GRAMA request. Designation is the process of determining what the primary classification would be in review of a records series as a whole.

> **63G-2-103. Definitions.**
> . . . . (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.

Public records, 63G-2-103(21)

A public record is a record that is not private, controlled, or protected and that is not exempt from disclosure; therefore, all records are public unless expressly restricted by law.

Governmental entity, 63G-2-103(11)

GRAMA applies to records of governmental entities. Governmental entities include the state executive department agencies and offices, the Legislature and its offices and committees, the courts, state-funded institutions of education, and political subdivisions. Governmental entities also include all offices, boards, committees, departments, advisory boards, and commissions, etc., to the extent that they are established or funded by government to carry out the public’s business. Political parties are not governmental entities.

Individual, 63G-2-103(13) and Person, 63G-2-103(17)

GRAMA refers often to a person, especially in provisions of access and fees. It is important to remember that individual is defined as a human being. Person is much broader and includes an individual, persons, and organizations.

> **63G-2-103. Definitions.**
> . . . . (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.

Section 1.3 Records of Security Measures 63G-2-106

The General Provisions also include a section on security measures. Records regarding security measures and designed for the protection of persons and property are not subject to GRAMA. These records include such things as security plans, security codes, combinations and passwords, passes, keys, and security procedures.

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.

Section 1.4 Disclosure of records subject to federal law 63G-2-107

Records governed by HIPAA (Health Insurance Portability and Accountability Act), including medical records identified as protected by HIPAA and controlled or maintained by a governmental entity, are not subject to GRAMA.

63G-2-107. Disclosure of records subject to federal law.
Notwithstanding the provisions of Subsections 63G-2-201(6)(a) and (b), 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:

- (1) controlled or maintained by a governmental entity; and
- (2) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information.

Section 1.5 Certification of records officer 63G-2-108

One of the responsibilities of the chief administrative officer of each governmental entity is to appoint a records officer or records officers who will be trained to classify records and to respond to GRAMA requests (Utah Code Section 63A-12-103 (2)). Appointed records officers are required to certify annually by completing an online test. The State Archives administers certification, and reports on its website names and email addresses of certified records officers

> **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.

Module 2: Access to Records

Part Two delineates access rights to government records. These access rights include who has the right to inspect records, what restrictions exist and who has rights to access restricted records. Part Two specifies what fees may be properly assessed and the time limits to request, fulfill, and appeal records requests. Records officers must understand Part Two of GRAMA in order to fulfill records requests properly.

Section 2.1 Records Requests 63G-2-204

Requests -- Time limit for response and extraordinary circumstances.

GRAMA provides time limits for both responding to requests and appealing denials. These time limits are important because they protect rights and define responsibilities. A requester is entitled to a response within a reasonable timeframe. If the requester is not satisfied with the response, the appeal must be made within a specific time. Records officers must understand Section 204 in order to properly respond to records requests.

How to make a records request

A GRAMA request is an open records request. The first requirement is that a person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record. (Subsection 63G-2-204(2)) It is not exclusive to records *created* by the governmental entity. A governmental entity may make administrative rules specifying *where* and *to whom* a records request be sent. (Subsection (2)(d))

A GRAMA request is a written request containing the person's name, address, daytime phone number, and a description that identifies the requested record with reasonable specificity. A request of reasonable specificity means that a records officer, who is familiar with the governmental entity's records, understands what records are being sought. (Subsection (1)) Though GRAMA does not require it, if a request is unclear, then the governmental entity could facilitate the process and contact the requester for clarification.

> **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.

The State Archives has prepared forms a requester may use to help narrow the request, but GRAMA only requires that a request contain the information above. It does not require that a form be used.

In many instances, records are unquestionably public and openly available to the public. Both online and in government offices, many records are provided without the need for formal requests to facilitate access to public records. A governmental entity may provide public records from an oral request if the record can be readily made available and copy fees paid promptly. However, if a governmental entity does not intend to answer such a request promptly, then the requester should submit a written request.

Answering a GRAMA request, 63G-2-204(2, 3, 4, 7)

Records officers should respond to GRAMA requests as soon as reasonably possible, but no later than ten business days after receiving the written request; or, if the requester has asked for an expedited response, no later than five business days.

An expedited response can be requested when obtaining the information benefits the public rather than a person. GRAMA states that, "Any person who requests 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." (Subsection (4)) If a records officer declines to expedite a response, he or she must notify the requester within five business days. (Subsection (3))

There are four possible ways to respond to a GRAMA request. They are: (Subsection(3)(b))

- provide the record;
- deny the request, following the denial provisions of GRAMA;
- notify the requester that it does not maintain the record and provide a referral if known; or
- claim extraordinary circumstances exist that require more time before a response can be given.

> **63G-2-204. Requests -- Time limit for response and extraordinary circumstances.**
> . . . . (3) After receiving a request for a record, a governmental entity shall . . . .
>
> - (b)(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).

The first step in processing a GRAMA request is to determine whether the request is for a record as defined by GRAMA and if the governmental entity has the requested information.

If the governmental entity does not maintain the requested information, then the appropriate response is to notify the requester that it does not maintain the record. If possible, the governmental entity should provide the requester the contact information of the appropriate governmental entity. (Subsection (3)(b)(iii)) If the request is sent to an office of the governmental entity that is not the contact established by rule, the request should be forwarded to the appropriate office. The time limit for response begins when the request is received by the specified office. (Subsection (7))

If the governmental entity has the requested record, the next step is to determine if access to the requested record should be granted. If access is appropriate, the record should be provided.

If the records officer determines that a restricted classification is appropriate and that the requester is not entitled to the record, then the requester should be provided with a written notice of denial.

If the records request is so complex that the records cannot be provided within ten business days, or if other extraordinary circumstances exist, then the governmental entity should notify the requester of the circumstances, and let him or her know when to expect a further response. Requests are often for more than a single record, and a response might include a combination of responses, including denying in part and granting in part access to records.

To review, the table below outlines the time limits a governmental entity has to respond:

Government to respond to a GRAMA request	As soon as reasonably possible but no more than 10 business days	63G-2-204(3)
Government to affirm or deny request for expedited response	No more than 5 business days	63G-2-204(3)
Government to respond to expedited GRAMA request	No more than 5 business days	63G-2-204(3)
Government to respond if extraordinary circumstances	As soon as reasonably possible and according to additional details outlined in the law; notify when records will be available	63G-2-204(6)

Calculating time

GRAMA does not specify how to count days and contains both "business days" and "days" in the statute. Governmental entities should refer to the Utah Rules of Civil Procedure for calculating time limits. Unless otherwise provided, the first day counted is the day *following* receipt of the request. See Subsection 63G-2-403(1)(a): "30 days after the day on which the chief administrative officer of the governmental entity grants or denies…." Subsection (1)(b) reads "45 days after the day on which the original request for a record is made if…."

When the time period is less than 11 days, or described as business days, then Saturday, Sunday, and legal holidays are not counted, including the last day (which would then fall to the next business day). When days are over 11 days, then days are calculated as calendar days. Fridays are considered business days even if a governmental entity operates a four-day workweek.

Extraordinary circumstances, 63G-2-204(5, 6)

GRAMA identifies eight extraordinary circumstances (Subsection (5)). If an extraordinary circumstance exists, GRAMA allows the governmental entity to delay a response and specifies additional time (Subsection (6)). The governmental entity should advise the requester when to expect a response. A "busy" office is not an extraordinary circumstance.

Another governmental entity is using the record	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	63G-2-204(5)(a) 63G-2-204(6)(a)
Another governmental entity is using the record as part of an audit and returning the record would impair the audit	The originating governmental entity shall notify the requester when the record is available for inspection and copying	63G-2-204(5)(b) 63G-2-204(6)(b)
The request is for a voluminous quantity of records containing a substantial number of records *or* the requester seeks a substantial number of records in requests filed within five working days of each other	The governmental entity shall disclose the records that it has located which the requester is entitled to inspect and provide the requester with an estimate of the amount of time it will take to finish the work. It will complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible. If the person does not establish a right to an expedited response, the governmental entity may either require the person to provide for copying of the records or treat a request for multiple records as separate record requests, and respond sequentially to each request	63G-2-204(5)(c) 63G-2-204(6)(c)
The governmental entity is currently processing a large number of records requests		63G-2-204(5)(d) 63G-2-204(6)(c)
The request requires the governmental entity to review a large number of records to locate the records requested		63G-2-204(5)(e) 63G-2-204(6)(c)
The decision to release a record involves legal issues that require the governmental entity to seek legal counsel	The governmental entity shall approve or deny the request within five business days after the response time specified for the original request has expired [5 day extension]	63G-2-204(5)(f) 63G-2-204(5)(d)
Segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing	The governmental entity shall fulfill the request within 15 business days from the date of the original request	63G-2-204(5)(g) 63G-2-204(6)(e)
Segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming	The governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible	63G-2-204(5)(h) 63G-2-204(6)(f)

A requester who believes that extraordinary circumstances do not exist or that the timeframe for response is unreasonable can make an appeal. (Subsection 63G-2-401(1)(b)) The governmental entity must provide a notice of this right in its response to the requester.

No response, 63G-2-204(8)

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

If a governmental entity fails to respond, then it is considered a denial.

Good customer service practices promulgate that a governmental entity should strive to respond.

Section 2.2 Right to inspect records and receive copies of records 63G-2-201

Every person has the right to inspect a public record free of charge during normal business hours and the right to make a copy. This means that restrictions cannot be based on the reason the person is seeking a record, or conditional on citizenship, or any other personal characteristic.

> **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.

Going back to the definitions, a public record "means a record that is not private, controlled, or protected and that is not exempt from disclosure." (Subsection 63G-2-103(21)) A "record is public unless otherwise expressly provided by statute" (Subsection (2)). This means that the default classification of all government records is public.

GRAMA identifies three classifications of records for which access must be restricted: 1) *private* (as found in Sections 63G-2-302, 63G-2-303); 2) *controlled* (as found in Section 63G-2-304); and 3) *protected* (as found in Section 63G-2-305), and then includes, as not public, any record to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation. Generally, access to private and controlled records is restricted to protect the privacy of individuals. Access to protected records is restricted because restriction is in the public interest.

> **63G-2-201. Right to inspect records and receive copies of records.**
> . . . . (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.

In all cases where the records are not public—whether restricted by GRAMA or by some other rule or law—the law will describe the records to be restricted and name those who should or may have access. Government may not disclose a record that is private, controlled, or protected except as provided in this section. Access to records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation is subject to the access provisions specific to that statute, rule, or regulation.

Record formatting, 63G-2-201(8, 11, 12)

GRAMA is specific in what actions the governmental entity is not require to take in response to a records request. A governmental entity is not required to: (Subsection (8)(a))

- create a record;
- compile, format, manipulate, package, summarize, or tailor information;

- provide a record in a particular format not maintained by the governmental entity;
- fulfill the records request if it unreasonably duplicates a request from that person; or
- provide the record if it is available in a public publication that can be provided.

> **63G-2-201. Right to inspect records and receive copies of records.**
> . . . .(8) (a) In response to a request, a governmental entity is not required to: (i) create a record; . . ..

Even though not required, the governmental entity may still choose to accommodate the requester if doing so is reasonable. A governmental entity may provide the record in a particular format if it is able to do so reasonably and the requester agrees to pay the required fees. (Subsection (8)(b))

Access to records may not be hindered by its format. A governmental entity must be able to provide for proper public inspection and copy of public records even if they are electronic. (Subsection (11))

> **63G-2-201. Right to inspect records and receive copies of records.**
> . . . . (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.

Additionally, a governmental entity shall provide access to an electronic copy of a record in lieu of providing a paper copy if the requester prefers and the governmental entity maintains the record in electronic format, can provide the record without disclosing records with access restrictions, can segregate restricted records, and can provide the record without undue expenditures of resources. (Subsection (12))

Record copying, 63G-2-201(9)

If the request produces over 50 pages to copy, the governmental entity may allow the requester to do the copying if there are proper safeguards and there would be no disclosure of records with restricted access. The governmental entity may provide facilities for copying or allow the requester to provide his/her own facilities and personnel to do the work and waive the fees.

Section 2.3 Access to private, controlled, and protected documents 63G-2-202

Private, controlled, and protected records have access restrictions, but they still must be provided in specific instances and may be provided in others. The tables below explain who shall or may have access under which circumstances.

Private records, 63G-2-202(1)

Private, Only as specified in 63G-2-302, 63G-2-303	Access is limited to the individuals who the information is about and their representatives. Representatives include parents and guardians, legal representatives, an individual with power of attorney, and physicians if the record in question is a medical record. Access is granted to individuals with a notarized release from the subject or representative, signed within the last 90 days.	63G-2-202(1)
	Access may be provided to another governmental entity, another state, the United States, or a foreign government as provided under Section 63G-2-206 [records sharing].	63G-2-202(5)
	Access shall be given to a person who has a court order signed by a judge from a court of competent jurisdiction if the issues of access as stated in statute have been considered	63G-2-202(7)
	Access may be granted for bona fide research if the research cannot be done without providing access and the value of the research is greater than possible infringement of personal privacy. The researcher must assure security and confidentiality, may not disclose individual identifiers (unless auditing a research program), and may not use the information other than for the research.	63G-2-202(8)

Controlled records, 63G-2-202(2)

Controlled, Only as specified in 63G-2-304	Upon request, shall be released only to health care providers who have a notarized release from the subject of the record—signed at the time the subject became a client. Any health care provider who is the recipient of a controlled record should sign an acknowledgment that he or she will not further distribute the record or release it to the subject. Access shall be provided to individuals who have a legislative subpoena requesting release.	63G-2-202(2)
	Access may be provided to another governmental entity, another state, the United States, or a foreign government as provided under Section 63G-2-206 [records sharing].	63G-2-202(5)
	Access shall be given to a person who has a court order signed by a judge from a court of competent jurisdiction if the	63G-2-202(7)

	issues of access as stated in statute have been considered	
	Access may be granted for bona fide research if the research cannot be done without providing access and the value of the research is greater than possible infringement of personal privacy. The researcher must assure security and confidentiality, may not disclose individual identifiers (unless in auditing a research program), and may not use the information other than for the research.	63G-2-202(8)

Protected records,63G-2-202(4)

Protected, Only as specified in 63G-2-305	Access shall be provided to the person who provided the record or to an individual who has power of attorney and a notarized release from all interested parties who were protected by the classification. The notarized release must have been dated no more than 90 days prior to the request. Access shall be provided to individuals with a legislative subpoena requesting release.	63G-2-202(4)
	Access may be provided to another governmental entity, another state, the United States, or a foreign government as provided under Section 63G-2-206 [records sharing].	63G-2-202(5)
	Access shall be given to a person who has a court order signed by a judge from a court of competent jurisdiction if the issues of access as stated in statute have been considered	63G-2-202(7)

Under all circumstances, when access is provided to private, controlled, and protected records the governmental entity must obtain evidence of the requester's identity. (Subsection (6)) A driver's license or state issued identification is an example of what qualifies as evidence.

> **63G-2-202. Access to private, controlled, and protected documents**
> . . . . (6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

If there is more than one subject of a private or controlled record, the portion that pertains to another subject must be segregated from the portion the requester is entitled to inspect. (Section 63G-2-202(3))

Section 2.4 Fees 63G-2-203

GRAMA states that a governmental entity may charge a reasonable fee to cover the actual cost of providing a record.

> **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).

If the record is provided in a form other than that in which it is normally maintained, then the fee can include: (Subsection (2)(a))

- the actual costs of staff time used for compiling, formatting, manipulating, packaging, summarizing, or tailoring data into a format or organization that meets the requester's needs;
- the direct administrative costs and staff time for search and retrieval; and
- the administrative costs and 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.

Staff time must be based on the salary of the lowest paid employee with the necessary skill and training to fulfill the request, and there can be no charge for the first quarter hour of staff time. (Subsection (2)(b))

For state agencies, fees are established by the Legislature. Local governments should establish fees by ordinance or written formal policy. (Subsection (3)) It is a good idea to establish a fee schedule that includes copying costs. Fee schedules provide consistency and let requesters know what to expect. Additionally, it is reasonable, though not mandatory, that the governmental entity have the requester approve anticipated fees before beginning.

Before processing a request, a governmental entity may require payment of past fees or of future estimated fees if fees are expected to exceed $50 or if the requester has not paid for previous requests. Any excess must be refunded to the requester. (Subsection (8))

Fees ***cannot*** be charged for reviewing a record to determine whether it is subject to disclosure or for allowing a requester to inspect the record. (Subsection (5))

> **63G-2-203. Fees.**
> . . . .(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.

Fee waivers, 63G-2-203(4, 6)

In some instances fees may be waived. GRAMA encourages waiving the fee when the request benefits the public rather than a specific individual. (Subsection (4))

A 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. (Subsection 63G-2-204(4))

GRAMA also encourages the waiver of fees if the requester is the individual who is the subject of the record—or the guardian or legal representative—and for impecunious individuals [meaning impoverished] whose legal rights are directly implicated by the information in the requested records. (Subsection (4))

Because GRAMA provides for waivers, a governmental entity cannot simply state that it will never grant fee waivers. If a person is denied a fee waiver, that denial can be appealed in the same manner as a denial of public records access. (Subsection (6)) The governmental entity must provide a notice of this right in its response to the requester.

> **63G-2-203. Fees.**
> . . . .(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.

Section 2.5 Denials 63G-2-205

When denying access, either in whole or in part, a governmental entity must provide a written notice of denial. The notice of denial must contain the following information: (Subsection (2))

- a description of the record(s) to which access is being denied,
- the legal citation to the provision(s) of GRAMA or other statute which is the basis for denying access to the requested records,
- a statement that the requester has the right to appeal this decision to the governmental entity's chief administrative officer,
- a statement of the time limits for filing an appeal [which is 30 days], and
- the name and business address for the chief administrative officer.

> **63G-2-205. Denials.**
> . . . . (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.

A description of the records should state what the record is, but not release the restricted information to which access is being denied. Additionally, the denial might be for records with different content and different classifications or for a record that contains both public information and restricted information. Therefore, citations for each provision must be provided and the public information must be provided by segregating the restricted information out of the record.

A governmental entity may not destroy or give up custody of records involved in a denial until the period for an appeal has expired or the end of the appeals process. (Subsection (3))

> **63G-2-205. Denials.**
> . . . .(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.

Section 2.6 Sharing Records 63G-2-206

Records that are restricted from public access through classifications of private, controlled, protected, or that are restricted by some other statute, can be shared through written agreement within government. GRAMA outlines in broad terms, the entities with which sharing records is appropriate. GRAMA states that records can be shared with other governmental entities, government-managed corporations, political subdivisions, the federal government, and other state governments. Governmental entities that share records with other governmental entities should notify the recipient of the records' classification. The recipient must abide by the classification determined by the creating agency.

Section 2.7 Subpoenas -- Court ordered disclosure for discovery 63G-2-207

A subpoena is court ordered request for disclosure of records. It is an order from a court for a person to appear or to provide records under punishment for failure to appear or produce. It must be signed by a judge of competent jurisdiction. A subpoena is part of the judicial process and should not be responded to without the help of legal counsel. A subpoena should be turned over to the attorney who represents the agency immediately as there are critical time limits.

A subpoena is ***not* a GRAMA request**.

Module 3: Classification

In Part Two, GRAMA defines the structure of classification. Records are either public, and available for everyone to inspect and copy; they are private, controlled, protected under GRAMA, and disclosure is restricted; or their access is governed by court rule, another state statute, federal statute, or federal regulation, and their access is governed by that specific statute rule, or regulation. (Subsection 63G-2-201(2, 3))

Part Three of GRAMA identifies and provides general and specific direction to record classifications. Classification determines what access rights a person may have to records.

> **63G-2-103. Definitions.**
> . . . .(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).

Section 3.1 Records that must be disclosed 63G-2-301

GRAMA includes a list of records that must always be disclosed. (Subsection (2)) This list includes such things as:

- laws;
- the name, gender, gross compensation, job title, job description, business address, business email address, business telephone number, hours worked, employment dates, and relevant education, previous employment, and job qualifications of a current or former governmental entity employee (excluding undercover law enforcement and investigative personnel)
- minutes of an open public meeting;
- records filed with various offices that provide information about real property, including such things as titles, encumbrances, use restrictions, and tax status of real property;
- documentation of the compensation paid to a contractor or private provider; (a contractor works for government while a private provider is hired by government to work for the citizens);
- summary data, which means statistical data derived from restricted records that does not reveal the restricted elements;
- voter registration records, excluding the voter's driver license number and Social Security number.

GRAMA also lists records that are **normally public**. (Subsection (3)) These records include those for which access can be restricted if circumstances exist that make interests favoring restriction outweigh the interests favoring access.

- administrative staff manuals and policy statements;
- contracts;
- records documenting compliance to the terms of a contract;
- drafts that were circulated beyond the governmental entity and it's immediate business associates,
- drafts that were not finalized but which were relied on to make a decision;
- disciplinary records of a past or present governmental entity employee if the disciplinary action has been completed, all time periods for administrative appeal have expired, and the charges were sustained;

- final audit reports;
- occupational and professional licenses;
- business licenses.

An example of a restricted classification for these normally public records might include administrative staff manuals for the prison that include information that would potentially be dangerous in the hands of inmates. In this instance, this normally public record could be classified as protected under Section 63G-2-305(13), which protects information, which if disclosed, would jeopardize the security or safety of a correctional facility.

The examples provided here are not a complete list of records which GRAMA identifies as normally public or records that must be disclosed. Neither is the list identified in GRAMA exhaustive. Ultimately, a record is public unless otherwise expressly stated by law.

Section 3.2 Private Records 63G-2-302

Private records contain information about individuals. GRAMA identifies records that are private and records that are private if properly classified, which represents two tiers of restriction.

> **63G-2-302. Private Records.**
> . . . .(1) The following records are private: . . . .
> (2) The following records are private if properly classified by a governmental entity:

Examples of records that are always private, include:

- data on individuals' medical history, diagnosis, condition, treatment, evaluation, or similar medical data,
- records of publicly funded libraries that will identify a patron,
- employment records that would disclose an individual's home address, home phone number, Social Security number, insurance coverage, marital status, or payroll deductions, and
- information about individuals which is voluntarily provided as part of that person's online interaction with government

GRAMA provides another list of private records, which it identifies as private if properly classified. This language offers records officers the opportunity to consider the circumstances of a specific records request and use their best judgment in determining whether to restrict access.

Examples of records that are private if properly classified include:

- records that provide personal status information about employees, such as race, religion, disabilities, and performance evaluations,
- records describing a person's personal finances,
- other records containing data on individuals when disclosure would constitute a clearly unwarranted invasion of personal privacy.

The last example allows records officers to restrict access in situations not contemplated in GRAMA, but in which they consider that the release of information clearly will be an unwarranted invasion of personal privacy.

These lists represent only a few examples of private records. A complete list can be found in Subsections (1) and (2). A careful review of these lists of private records as described in the law is necessary for those making decisions about private classifications for records access.

Private information concerning certain government employees

GRAMA enables governmental employees identified as "at-risk" and their family members to restrict certain information about them as private. At-risk government employees are law enforcement and judicial employees or former employees. Records that would disclose their home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions may be restricted at the written request of the at-risk employees.

Section 3.3 Controlled Records 63G-2-304

Controlled records are similar to private records in that they contain personal information. However, the designation of controlled is limited to records which contain medical, psychiatric, or psychological data about individuals that is restricted because releasing the information to the subject could be detrimental to his or her mental health, to the life or safety of any individual, or when releasing the record would constitute a violation of normal professional practice.

> **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.

Not all medical information is controlled, and may otherwise be properly classified as private (Subsection 63G-2-302(1)(b)) or subject to disclosure as regulated by federal law under HIPPA. (Subsection 63G-2-107)) Medical, psychiatric, or psychological data is controlled subject to Subsection (2)—that release of the information would be detrimental to the subject or is in violation of professional practices.

Section 3.4 Protected Records 63G-2-305

Protected records usually do not contain data about individuals, but they contain information that is restricted in the public interest. Currently, GRAMA includes 63 categories of protected records. Many records are protected only when certain situations or circumstances exist.

Some general categories of protected records are: private business interests, government business and economic interests, government negotiation and legal interests, government operations, safety and security interests, and records of particular governmental entities with interests for restriction.

Some examples of restricted records include:

- commercial or non-individual financial information if disclosure could result in injury, unfair competitive advantage, or impair obtaining information in the future;
- commercial or financial information to the extent that disclosure would lead to financial speculations that would be detrimental to government or the economy;
- records the disclosure of which could cause commercial injury or result in a competitive advantage to competitor of a commercial project entity;
- test questions and answers to be used in license certification, registration, or academic exams;
- drafts, unless otherwise classified as public;
- records the disclosure of which would give an unfair advantage to someone proposing to enter into a contract or agreement, except bids and proposals cannot be restricted after the bid has been awarded;
- records that identify real property or the value of real property under consideration for public acquisition;
- records created for audit purposes if release could interfere with the audit. Additionally, records which, if disclosed, will interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes; and records which, if disclosed, would create a danger of depriving a person of a right to a fair trial or impartial hearing;
- records subject to attorney client privilege;
- transcripts, minutes, or reports of the closed portion of a meeting of a public body;
- an individual's home address, home telephone number, or personal mobile phone number, unless classified as public, if the information was required to comply with a law, ordinance, rule, or order of a government entity; and the subject has a reasonable expectation that this information will be kept confidential.

Specificity of classifications

Unlike the list of examples of public records found in Section 63G-2-301—which are not exhaustive—the lists in the restricted classifications of private and protected are complete. In order for a record to be classified as private, controlled, or protected, it must be stated in the law.

In any classification process, a careful reading of the law is required. Classification statements are often qualified or conditional. For example, it is not sufficient that disclosure of a record might be an invasion of privacy; it must constitute a *"clearly unwarranted invasion of personal privacy."* (Subsection 63G-2-302(2)(d), emphasis added) The Utah Supreme Court has ruled, "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." (Deseret News Publishing Company V. Salt Lake County, No. 20060454) An example comes

from a state records committee decision, where it ruled that graphic crime scene photographs were a "clearly unwarranted invasion of personal privacy." (Kurt Danysh, Petitioner, Vs. Unified Police Department, Respondent, Decision and Order, Case No. 12-09)

An example in the protected classification regards investigative records. Investigation records by themselves are not protected; they are protected only if the other specific conditions stated in the law exist. (Subsection 63G-2-305(10))

> **63G-2-305. Protected Records.**
> . . . .(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;

Attorney client privilege

The Utah Supreme Court has ruled that records produced in the regular course of business are not protected records under the provision of records prepared in anticipation of litigation. "A document is prepared in the ordinary course of business when it is created pursuant to routine procedures or public requirements unrelated to litigation.. . .Their mere use in litigation does not render them exempt under GRAMA." (Southern Utah Wilderness Alliance, V. The Automated Geographic Reference Center, No. 20060813.)

> **63G-2-305. Protected Records.**
> . . . . The following records are protected if properly classified by a governmental entity: . . .
> (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;

Additionally, the Court ruled that the mere existence of a relationship between a governmental entity and its attorney or attorneys does not rise to the level of being protected under attorney client privilege. The provisions of attorney client privilege are found in the Judicial Code. (Title 78B) The Utah Supreme Court explains that "to rely on the attorney-client privilege, a party must establish: (1) an attorney-client relationship, (2) the transfer of confidential information, and (3) the purpose of the transfer was to obtain legal advice." (Southern Utah Wilderness Alliance, V. The Automated Geographic Reference Center, No. 20060813.)

> **78B-1-137. Witnesses -- Privileged communications.**
> . . . .(2) An attorney cannot, without the consent of the client, be examined as to any communication made by the client to the attorney or any advice given regarding the communication in the course of the professional employment. An attorney's secretary, stenographer, or clerk cannot be examined, without the consent of the attorney, concerning any fact, the knowledge of which has been acquired as an employee.

Drafts

GRAMA references drafts several times and records officers should be acquainted with the differences. GRAMA focuses on how the draft is used to determine its status.

- a temporary draft is not a record if used temporarily and not maintained by the governmental entity (Subsection 63G-2-103(22)(b)(ii))
- a draft is a public record when relied upon to make decisions or take action *or* if circulated outside of government or a private contractor (Subsection 63G-2-301(3)(j))
- a draft is a protected document if it is not a public document (Subsection 63G-2-305(22))

Section 3.5 Duty to evaluate records and make designations and classifications 63G-2-307

GRAMA provides that each governmental entity evaluate all of its records, designate classifications, and report these designations to the State Archives. The evaluation of classification is based on the content of the record, not its format. The law does not require that any record be classified until that record is requested. However, an effective method of managing classification decisions is to designate intended classifications for each record series the governmental entity maintains. This provides a framework for appropriately determining a classification in a records request. If records officers need help in determining classifications, they can begin by referring to the suggested designations on the record series retention schedules on the Archives' website. Assistance is also available from the State Archives records ombudsman. Records officers can use the legal resources available to them (either from the Office of the Attorney General or county attorneys) and should consult their legal counsel as needed for classification issues.

> **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, Part 1, Archives and Records Service; 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.

Regardless, when a governmental entity receives a GRAMA request, it is obliged to review the requested record to determine its classification and possible disclosure relevant to the specific request. A governmental entity cannot use the records designation or the classification of a record series as the sole reason for non-disclosure, especially considering that request may be "for the disclosure of a single record within a record series that does not bear an express GRAMA classification." (Deseret News Publishing Company V. Salt Lake County, No. 20060454)

Governmental entities may re-designate classifications or re-classify information in records at any time.

Section 3.6 Segregation of records 63G-2-308

If a record contains both information that the requester is entitled to and information that the requester is not entitled to, then the governmental entity: 1) shall provide access to the information the requester is entitled to inspect and 2) may deny access to the information that the requester is not entitled to inspect.

Segregation is the process of separating out this information. If a record contains both public and restricted information, then the requester has the right to inspect the public information and the governmental entity has the responsibility to segregate the restricted information out of the record.

If a record contains private information that the requester is entitled to inspect—e.g., if he or she is the subject of the record—but also contains information about other subjects, then the governmental entity has the responsibility to segregate the information about the other subjects from the record.

This process is also called "redaction," which is to obscure the restricted information in the document, though this term is not used in GRAMA. Many public records contain private information that should be segregated or redacted before the records are disclosed. The end result should produce a meaningful record to meet good practices standards. If a governmental entity is in doubt on how and what to segregate or redact, it should consult its legal counsel.

Section 3.7 Confidentiality claims 63G-2-309

There are two different claims to confidentiality. First, a claim of confidentiality can be asserted if the record includes either or both of the following information:

- trade secrets as defined in Section 13-24-2 (Subsection 63G-2-305(1));
- commercial or non-individual financial information if disclosure could result in injury, unfair competitive advantage, or impair obtaining information in the future (Subsection 63G-2-305(2)).

A person who provides such a protected record to a governmental entity shall provide: 1) a written claim of business confidentiality and 2) a concise statement of reasons supporting the claim of business confidentiality.

> **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.

Second, a person or a federal, state, or local governmental entity who provides a record believed to be a protected record under Subsection 63G-2-305(40)(a)(ii) and/or (vi) shall provide the institution of higher education a written claim of confidentiality as provided under Section 53B-16-304. Records under Subsection 63G-2-305(40) are records specific to higher education; specifically, in these cases, unpublished data (Subsection 63G-2-305(40)(a)(ii)) and confidential research proposal information. (Subsection 63G-2-305(40)(a)(vi))

The governmental entity that maintains the record must notify the person or governmental entity who provided the written claim of confidentiality if, through a records request, the record is decided to be public or is decided to be disclosed under weighing provisions. The record may not be disclosed, though, until the time for appeal expires or the end of the appeals process.

Section 3.8 Records made public after 75 years 63G-2-310

Restricted classifications are not permanent. Records that are not classified as public should become public when *the justification for the restrictive classification no longer exists*. All records are presumed to be public 75 years after their creation, with the exception that records containing information about individuals 21 years of age or younger at the time of the record's creation shall be presumed public after 100 years.

Module 4: Appeals

An important provision of GRAMA is the right of a requester or interested party who has been denied access to records to be able to appeal the decision. Part Four outlines the appeals process.

Section 4.1 Definitions 63G-2-400.5

In order to clarify the appeals process, GRAMA provides relevant definitions specific to part four. (Subsection 63G-2-400.5).

- **Access denial** means a governmental entity's denial of records either through a notice of denial or through failure to provide records.
- **Appellate affirmation** is a decision affirming an access denial. It can be the decision of the chief administrative officer or his designee, a local appeals board, or the state records committee.
- **Interested party** means a person, other than the requester, who is aggrieved by an access denial or appellate affirmation.
- **Local appeals board** means an appeals board established by a political subdivision.
- **Record request** means a request for a record.
- **Requester** means a person who submits a record request to a governmental entity.
- **Records committee appellant** means an entity that seeks an appeal with the state records committee. Possible appellants include requesters or interested parties who appeal an access denial, but can also include political subdivisions that appeal the decision of a local appeals board.

Section 4.2 Appeal to head of governmental entity 63G-2-401

The first appeal must go to the chief administrative officer, or designee, of a governmental entity. A requester or interested party can appeal to the chief administrative officer within 30 [calendar] days after the governmental entity sends a notice of denial or 30 days after time limits for response have expired if the governmental entity does not respond or provide the requested records.

In addition to denial of access to records, the requester or interested party can also appeal a governmental entity's claim of extraordinary circumstances if the person believes such circumstances do not exist or the time frame specified is unreasonable (Subsections 63G-2-401(1), 63G-2-204(8)). An unreasonable denial of a request for a fee waiver is also subject to appeal. (Subsection 63G-2-203(6)).

The notice of appeal must contain the requester or interested party's name, address, and daytime telephone number and the relief sought. The requester or interested party may include a short statement of facts and reasons in support of the appeal. (Subsection (2, 3)).

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

After receiving an appeal, the chief administrative officer should respond within five business days, or 12 days if an issue of confidentiality exits. However, the time period may be extended by agreement of all parties. (Subsection 63G-2-401(5)(c)).

The chief administrative officer may, weighing varying interests and public policy, order disclosure of the records, if the interests favoring access are equal or greater than those favoring restriction (Subsection (6)). However, certain records of enforcement or litigation may only be released upon a higher standard of weighing the interests of access or restriction. Details are found in Section 63G-2-406.

The chief administrative officer's determinations must be sent to all participants. If the chief administrative officer affirms the denial, in whole or in part, he or she should provide a notice of denial that includes:

- a statement that the requester or interested party has the right to appeal to the state records committee or district court; or a statement that the requester or interested party has the right to appeal to the local appeals board if the governmental entity has created an appeals board (Subsection (7));
- the time frame for appeal (which is 30 days); and
- the name and business address of the state records committee executive secretary or contact information for the local appeals board

If a chief administrative officer fails to provide the requested records or issue a notice of denial within the specified time, that failure is the same as a determination denying access to records. Denial based on failure to respond or provide records can also be appealed.

Section 4.3 Evidentiary standards for release of certain enforcement and litigation records 63G-2-406

The weighing provision is found in several provisions of GRAMA, including the intent language and the appeals process. The chief administrative officer or the state records committee can invoke the weighing provision when "the interests favoring access are greater than or equal to the interest favoring restriction of access" (Section 63G-2-201(5)(b)). The weighing provision allows for the release of properly restricted records.

In instances where the weighing provision is invoked, the requirement is that the benefit of disclosure is equal to or greater than the interests favoring restriction. The exceptions to this process are records found in Section 406. As noted in this provision, the records listed within are subject to disclosure by a governmental entity's chief administrative officer, the state records committee, or by court order only if the conditions of GRAMA's weighing provision are satisfied and "if the person or party seeking disclosure of the record has established, by a preponderance of the evidence" that the public interest in providing access is, in fact, equal to or greater than the conditions favoring restriction of access.

Under this section of GRAMA, and only for the records listed below, the law places the burden of providing sufficient evidence favoring disclosure on the person or party requesting disclosure of the record.

Records covered by Section 63G-2-406:

Records maintained for civil, criminal, or administrative enforcement purposes or audit purposes, for discipline, licensing, certification, or registration purposes	63G-2-305(10)
Records that would jeopardize the life or safety of an individual	63G-2-305(11)
Records that are subject to the attorney client privilege	63G-2-305(17)
Records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity… in anticipation of, litigation, judicial, …or administrative proceeding.	63G-2-305(18)
Records revealing a governmental entity's strategy about: collective bargaining, imminent or pending litigation;	63G-2-305(23)
Records of investigations of loss occurrences and analyses of loss occurrences…covered by Risk Management Fund, Employers' Reinsurance Fund, Uninsured Employers' Fund;	63G-2-305(24)
Settlement negotiations but not including final settlements or empirical data	63G-2-305(33)

Section 4.4 Options for appealing a denial 63G-2-402

If the chief administrative officer of a governmental entity makes an "appellate affirmation," which means a decision to affirm the denial of a record, the requester or an interested party may appeal that decision.

Local appeals board

Appeal must be made to the local appeals board if the governmental entity has established one. The time limits and details of appeal to a local appeals board will be established by local policy or ordinance. However, GRAMA requires that a local appeals board be made up of three members:

- an employee of the governmental entity
- a member of the public
- a member of the public who is a professional records manager or records requester.

Decisions of a local appeals board can be appealed to the state records committee or district court by either the governmental entity or the requester. An appeal before the state records committee of the decision of a local appeals board is not "de novo," but the records committee will review the decision of the local board. (Subsection (5)(b), 63G-2-403(1)(b))

State records committee

If the governmental entity is part of state government or is a local governmental entity that has not established a local appeals board then a requester or interested party can appeal to the state records committee or petition for review in district court. Appeals to the state records committee and the district court are conducted "de novo," which means that they make independent decisions. Both the state records committee and the district court may review the records and documents "in camera" or in private. The governmental entity must be able to provide the disputed records at the hearing. The state records committee may permit a governmental entity to bring a representative sample of records for voluminous records requests. (Rule R35-1. State Records Committee Appeal Hearing Procedures)

Section 4.5 Appeals to the records committee 63G-2-403

Petitions for appeals to the records committee must be made to the executive secretary of the records committee who is familiar with all aspects of the requirements for appeal. However, records officers should review the provisions regarding appeals to the records committee to understand the governmental entity's responsibilities.

The petitioner must send a copy of the appeal to the governmental entity on the same day the appeal is filed with the records committee (Subsection (3)). This is so the governmental entity is aware of the appeal and can prepare. If the executive secretary of the records committee schedules a hearing, she will send a notice of the hearing, the appeal, and statement of facts to all participating parties, including the governmental entity (Subsection (4)).

The governmental entity is required to send its statement of facts, reasons, and legal authority in support of the governmental entity's position to the executive secretary and to the requester or interested party no later than five days before the hearing. (Subsection (5))

The state records committee's administrative rules, Title R35. Administrative Services, Records Committee, govern its proceedings. If a governmental entity is involved in a hearing before the records committee, it should review them. In certain circumstances the state records committee can deny a petitioner's request for a hearing.

At a hearing the committee will hear statements and testimony from each party in an open and public meeting and will draft the substance of its decision and order in the hearing. If the records committee orders release of the records, the governmental entity has 30 [calendar] days to both comply with the order and submit a notice of compliance with the executive secretary, or appeal to district court. If the records committee upholds the restricted classification, the petitioner may petition the court within 30 [calendar] days (Subsections (8, 12, 14)).

The entire response and appeals process with respective time frames is shown in this table:

Governmental entity to respond to a GRAMA request	As soon as reasonably possible but no later than 10 business days after receiving the request	63G-2-204(3)
Governmental entity to affirm or deny request for expedited response	No more than 5 business days after receiving request for expedited response	63G-2-204(3)
Governmental entity to respond to expedited GRAMA request	If request for expedited response is granted, no more than 5 business days after receiving request	63G-2-204(3)
Governmental entity to respond to GRAMA request if extraordinary circumstances	As soon as reasonably possible and according to additional details outlined in the law; notify when records will be available	63G-2-204(6)
Requester or interested party to appeal governmental entity's denial to chief administrative officer	Within 30 days after governmental entity sends a notice of denial or 30 days after response time expires if governmental entity failed to provide records	63G-2-401(1) 63G-2-204(8)
Chief administrative officer to	No more than 5 business days or 12 business	63G-2-401(5)

respond to appeal	days if business confidentiality is involved; by agreement of parties, time may be extended	
Requester or interested party to notify governmental entity of intent to appeal	On same day as appeal is made to the state records committee	63G-2-403(3)
Requester or interested party to appeal chief administrative officer's denial to state records committee	Within 30 days after date of issuance of decision or 30 days after response time expires and if governmental entity fails to provide records; 45 days if claim of extraordinary circumstances and failure to issue a decision	63G-2-403(1)
Interested party or requester to appeal chief administrative officer's denial to local appeals board	Undefined in GRAMA, but to be established by ordinance or policy of the local governmental entity	
Records committee appellant to appeal local appeals board's decision to the state records committee	Within 30 days after date of issuance of decision being appealed	63G-2-203(1)
State records committee executive secretary to schedule or decline to schedule a hearing	Within 7 business days after receiving a notice of appeal	63G-2-403(4)
Date of hearing	Not less than 16 days or more than 64 days after date notice of appeal was filed (provisions for extension if too many hearings)	63G-2-403(4)
Governmental entity to provide statement of supporting facts to state records committee and all interested parties.	Not later than 5 business days prior to hearing date.	63G-2-403(5)
State records committee to issue a signed order	Within 7 business days after the hearing	63G-2-403(11)
Governmental entity to file notice of compliance or appeal the state records committee's decision in district court.	Within 30 days after the date of the state records committee's order or decision	63G-2-403(1)
Any party to petition for judicial review	Within 30 days after the date of state records committee decision, or 30 days after decision of chief administrative officer or local appeals board if appellant chooses to seek legal redress without exhausting other recourse	63G-2-404(1)

Section 4.6 Judicial review 63G-2-404

A requester may petition the district court for judicial review of a chief administrative officer's decision. However, if the decision is that of a political subdivision with a local appeals board, appeal must first be made to the local board. Either a requester or a governmental entity may appeal to the district court for judicial review of either a local appeals board or state records committee decision. A party that chooses to appeal to the state records committee does not waive the right to thereafter appeal to district court. The court will make its decision "de novo."

As with an appeal hearing before the state records committee, the governmental entity may present evidence and written and oral testimony. The Rules of Civil Procedure apply to all judicial review and a governmental entity involved in judicial review must have legal counsel.

Module 5: Applicability to Political Subdivisions, the Judiciary, and the Legislature

There are exceptions to the applicability of GRAMA. Political subdivisions, the judiciary, and the Legislature have certain latitude.

Section 5.1 Applicability to the Judiciary; Applicability to the Legislature 63G-2-702, 63G-2-703

The Judiciary and the Legislature and its staff offices, in Sections 63G-2-702 and 63G-2-703 respectively, are exempt from some of the requirements of GRAMA. Their records are still the property of the state, and classification standards and access requirements cannot be altered. However, they are not subject to the appeals process of which the state records committee is a part. The Judiciary and the Legislature are responsible for the management and retention of their own records, may establish their own records retention schedules, and are not subject to GRAMA fee schedules.

Section 5.2 Political subdivisions may adopt ordinances in compliance with chapter 63G-2-701

The law grants political subdivisions the right to adopt policies or ordinances relating to the classification, designation, access, denials, segregation, appeals, management, and retention of records. While there is latitude for difference in establishing policies about records retention, about the appeals process, and about the implementation of certain practices, classification standards and access requirements cannot be altered.

Every policy, ordinance, or amendment must be filed with the State Archives within 30 [calendar] days of its effective date. Additionally, all retention schedules maintained by a political subdivision must be reported to the State Archives.

> **63G-2-401. Political subdivisions may adopt ordinances in compliance with this chapter.**
> (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.

Ordinances or policies relating to information practices should provide:

- standards for the designation of records and require classification of records in accordance with those standards
- guidelines for the establishment of fees
- standards for the management and retention of the entity's records

Political subdivisions should establish an appeals process for persons aggrieved by access decisions. If the process involves a local appeals board, membership and appeal rights for that board are described in Section 4.4. A political subdivision may establish its own reasonable response times and time limits for appeals.

Records officers of political subdivisions should be familiar with their local ordinances, records policies and fee schedules.

Any political subdivision which does not adopt a policy or ordinance must abide by the provisions of GRAMA.

Module 6: Other Provisions in GRAMA

GRAMA currently has nine parts. The parts of GRAMA not included in this training are:

Part Five, State Records Committee (63G-2-5)

The provision creates the State Records Committee, lists the membership configuration, and outlines its duties—to approve records retention and to hear appeals to records access denials. The appeals process for hearings before the state records committee is found is Part Four.

Part Six, Collection of Information and Accuracy of Records (63G-2-6)

This provision identifies the rights of individuals about whom data is maintained, outlines how records can be amended, and explains that records must be maintained according to approved retention schedules. Government has the responsibility to ensure that the information it maintains about the public is accurate and ensure that the public has the means to identify and correct, if necessary, that information.

Part Eight, Remedies (63G-2-8)

This provision defines criminal penalties and liabilities associated with violation of the law. To protect the confidentiality of private, controlled, and protected records, GRAMA provides criminal penalties to employees who knowingly and intentionally disclose restricted records. Penalties do not apply to records not properly classified or under “whistle blowing” actions. Disciplinary actions may be taken against an employee who intentionally violates the provisions of GRAMA.

Part Nine, Public Associations (63G-2-9)

The provision states that public associations are also subject to this act in specific circumstances. This section was added to cover the committees involved in managing the 2002 Olympic winter games in Utah.

For more information about these provisions, contact the State Archives or sign up for additional training from the State Archives.