

GRAMA 101

Presentation by Paul Tonks, AAG Counsel for the
Utah Division of Archives & Records Service

The image shows the top portion of the Utah State Capitol building, featuring a prominent green dome with a white top. The building is set against a background of reddish-brown, textured rock formations.

UTAH DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF ARCHIVES & RECORDS SERVICE

Purpose of this presentation:

- Explain generally what GRAMA is and what is a “GRAMA Request.”
- Explain generally how governmental entities are required to retain records under GRAMA.
- Explain generally about “records sharing” under GRAMA.

Paul Tonks, Assistant Attorney General

- **Assigned Counsel for Division of Archives and the State Records Committee since 2008**
- **Practicing law since 1996**
- **Staff Attorney for Ohio Courts of Appeals (10th and 12th Appellate Districts) 1996-2002**
- **Ohio Assistant Attorney General 2002-2004**
- **Associate Attorney Perez & Morris LLC**
- **Utah Assistant Attorney General 2008 to present**
- **Also currently represent Auditor's Office, Department of Administrative Services, Division of Finance, Division of Purchasing, Division of Fleet, Judicial Performance Evaluation Commission, and Office of Administrative Rules.**

WHAT IS GRAMA?

WHAT IS GRAMA?

Government

Records

Access

Management

Act

WHAT IS GRAMA?

Utah passed the Government Records Access Management Act in 1991 to balance the public's right to know with the public's right to privacy.

GRAMA Promotes access and defines when privacy and/or security issues outweigh the public's right to know.

WHAT IS GRAMA?

GRAMA governs:

1. How persons or entities get access to Governmental Records, and
2. How Government Records are managed.

Pretty Simple!

**1. WHAT IS A RECORD?
...and why does it really
matter?**

Definition of a Record:

A “book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics: (i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and (ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.”

Utah Code § 63G-2-103(22)(a).

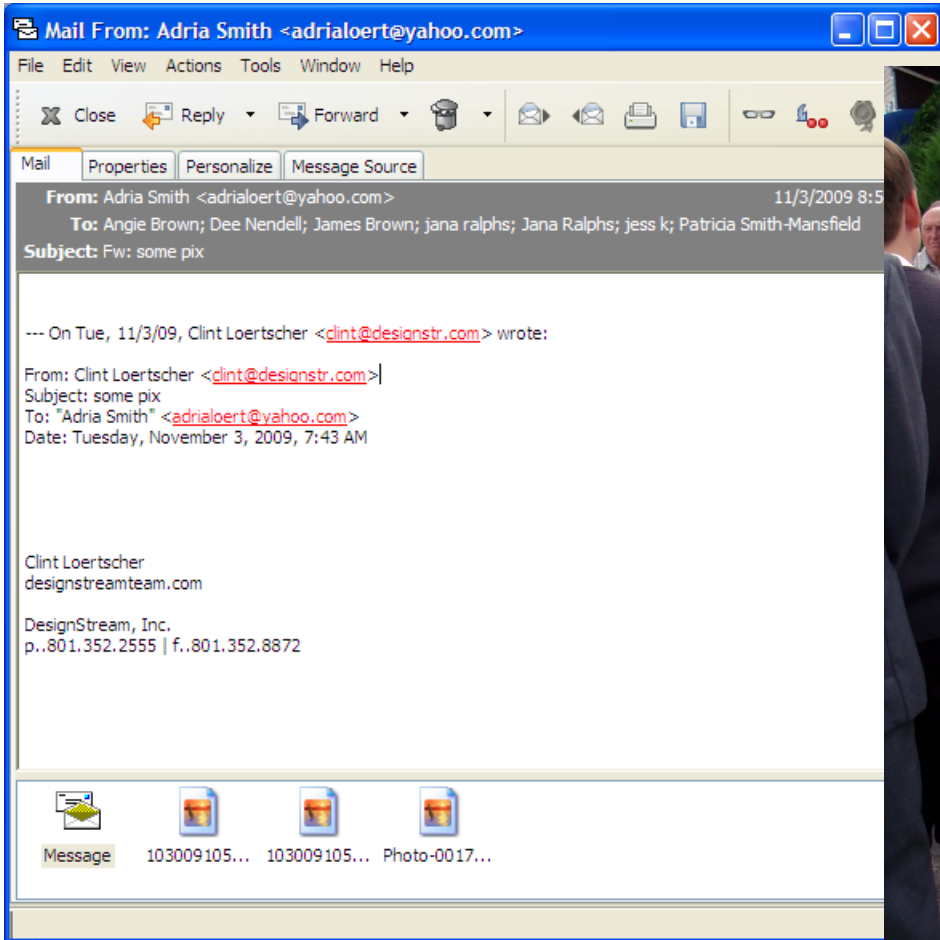
What Isn't A Record?

A personal note or personal communication prepared or received by an employee or officer of a governmental entity in the employee's or officer's personal capacity. Utah Code § 63G-2-103(22)(b)(i).

Junk mail or a commercial publication received by a governmental entity or an official or employee of a governmental entity. Utah Code § 63G-2-103(22)(b)(vi).

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. Utah Code § 63G-2-103(22)(ix).

Material that is legally owned by an individual in the individual's private capacity. Utah Code § 63G-2-103(22)(iii).



Key to what is a record: Personal v. Work Related

- If personal, probably not a record subject to GRAMA.
- If work related, probably a record subject to GRAMA.

What Isn't A Record?

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 GRAMA.

Utah Code § 63G-2-106.

GRAMA does not apply to a record containing protected health information if the record is governed by HIPPA and the record is controlled by a governmental entity.

Utah Code § 63G-2-107.

Utah Code § 63A-12-105(1):

“All records created or maintained by a state governmental entity **are the property of the state** and shall not be mutilated, destroyed or otherwise damaged or disposed of, in whole or part except as provided in this chapter and Title 63G, Chapter 2, Government Records Access and Management Act” (“GRAMA”).

Utah Code § 63A-12-105(2):

Except for records which constitute a valuable intellectual property, “all records created or maintained by a political subdivision of the state **are the property of the state** and shall not be mutilated, destroyed or otherwise damaged or disposed of, in whole or part except as provided in this chapter and Title 63G, Chapter 2, Government Records Access and Management Act” (“GRAMA”).

Penalties??

Utah Code § 63A-12-105(3)(a):

“It is unlawful for a person to **intentionally** mutilate, destroy, or to otherwise damage or dispose of the record copy of a record knowing that the mutilation, destruction, damage, or disposal is in contravention of” the applicable retention schedule.

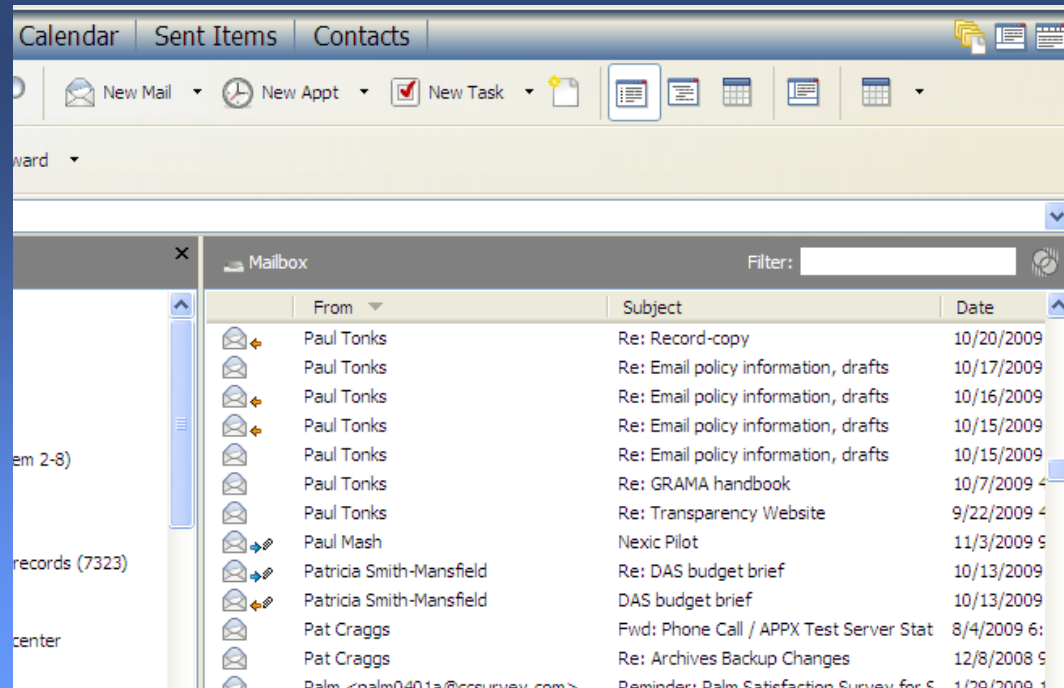
- Class B misdemeanor and potential disciplinary action. Utah Code § 63A-12-105(3)(b) & (c).

How are “records” characterized under GRAMA?

- 1. Public Records:** Everything that isn't private, controlled, protected, or restricted.
- 2. Private Records:** Generally records about individuals that contain private personal information such as government identification numbers, medical information, or other personal information.
Utah Code § 63G-2-302.
- 3. Controlled Records:** Generally medical, psychiatric, or psychological records. Utah Code § 63G-2-304.
- 4. Protected Records:** A list of 67 different types of records the Utah Legislature has determined should be “protected” if properly classified by the governmental entity. Utah Code § 63G-2-305.
- 5. Restricted Records:** Records which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation.
Utah Code § 63G-2-201(3)(b) & -201(6).

2. O.K., I know what a record is, what exactly is a GRAMA Request?

...and why does that really matter?



GRAMA Requests

(A request to see a government record)

- **Why should anyone be able to look at government records?**
 - Utah Legislature recognizes the public's constitutional right of access to information concerning the conduct of the public's business. Utah Code § 63G-2-102(1)(a).
 - Utah Legislature also recognizes a public policy interest in allowing government to restrict access to certain records **as specified in GRAMA** including access to personal data gathered by governmental entities. Utah Code § 63G-2-102(1) & (2).

Requirements for a GRAMA Request

Utah Code § 63G-2-204:

(1) A person making a request for a record shall furnish the governmental entity with a written request containing:

(a) the person's name, mailing address, and daytime telephone number, if available; and

(b) a description of the record requested that identifies the record with reasonable specificity.

(2) ...a person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record.

63G-2-204(3) After receiving a request for a record, a governmental entity shall:

- (b) as soon as reasonably possible, but no later than 10 business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person:
- (i) **approve** the request and provide a copy of the record;
 - (ii) **deny** the request in accordance with the procedures and requirements of Section **63G-2-205**;
 - (iii) **notify** the requester that it does not maintain the record requested and provide, if known, the name and address of the governmental entity that does maintain the record; or
 - (iv) **notify** the requester that because of one of the extraordinary circumstances listed in Subsection (5), it cannot immediately approve or deny the request, and include with the notice:
 - (A) a description of the circumstances that constitute the extraordinary circumstances; and
 - (B) the date when the records will be available, consistent with the requirements of Subsection (6).

**REMEMBER: A RECORD IS
PUBLIC UNLESS OTHERWISE
EXPRESSLY PROVIDED BY
STATUTE**

(the default is a public record)

Utah Code § 63G-2-201(2)

How do I know how a record is classified?

Short answer: When in doubt, ask either the Division of Archives or your legal counsel.

Long answer: Classifications of records is dependent upon the type of record and whether that type of record has been specifically excluded by the Utah Legislature in GRAMA from being considered a private, controlled, or protected record. Determinations of classifications of records should be made at the time of the GRAMA request pursuant to *Deseret News v. Salt Lake County*.



- CAN A GOVERNMENTAL ENTITY CHARGE A FEE FOR RECORDS?
- **YES AND NO.** GRAMA DOES NOT REQUIRE THAT FEES BE CHARGED
 - A governmental entity may not charge for reviewing or inspecting a record to determine whether it is subject to disclosure. -203(5)
 - A governmental entity **MAY** charge a “reasonable fee” to cover the actual cost of copying.

A governmental entity may also charge for staff time needed to summarize, compile or tailor the records to meet a request

NOTE: An individual requesting records may request a waiver of the fee charged.



When in doubt...

Option #1: Consult GRAMA

**Option #2: Consult with Archives or
Legal Counsel.**



3. Retention Schedules

...what are they and does it really matter?

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Utah Code § 63A-12-105(1) & (2):

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Why do we “retain” records?

1. Most are kept during their useful period; or
2. Some are kept forever because of historical value.

Example of useful period: Natural gas bill for the State Office Building.

Example of record of historical value:
Utah Constitution.

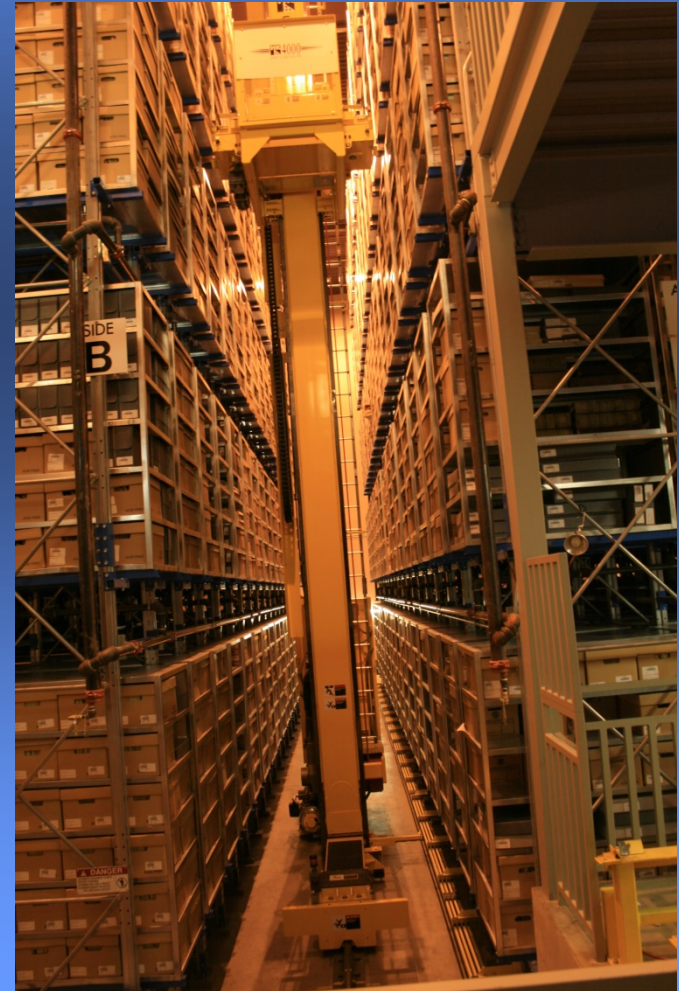


So what is a retention schedule?

Short answer: How long a political subdivision must “retain” a record.

Long answer: “The process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.”

Utah Code § 63G-2-103(26).



Utah Code § 63G-2-604

1. Governmental entities are required to file a proposed schedule for the retention and disposition of each type of material that is defined as a record under GRAMA. Utah Code § 63G-2-604(1)(a).

2. The retention schedule is reviewed and approved of by the State Records Committee. Utah Code § 63G-2-604(1)(b).

The Office of the Attorney General shall provide counsel to the State Records Committee and shall review proposed retention schedules. Utah Code § 63G-2-502(8).

3. If the governmental entity has not received an approved retention schedule for a specific type of material that is classified as a record under GRAMA, the **model retention schedule** maintained by State Archives shall govern the retention and destruction of that type of material. Utah Code § 63G-2-604(1)(c).

4. The governmental entity **shall maintain and destroy records** in accordance with the retention schedule. Utah Code § 63G-2-604(1)(b).

RETENTION SCHEDULES ARE CONTENT SPECIFIC AND NOT FORMAT SPECIFIC!!!

(schedules do not determine how long “e-mails” are kept)

The Retention Schedule tells you: (1) How long the political subdivision should keep a record; and (2) When a record may be destroyed.

...So How do you find Retention Schedules?

www.archives.utah.gov

“Record Management”

What will I find there?

- All approved retention schedules.
- The State General Retention Schedule.



Example of a Retention Schedule:

AGENCY: Attorney General's Office

SERIES: 64

TITLE: Case files

DATES: 1898-

ARRANGEMENT: Alphanumerical

DESCRIPTION: These records document cases handled by the Attorney General's Office beginning early in the agency's history. Examples of the cases range from actions taken on business such as Mountain Fuel, Utah Gas Service, Utah Power and Light Company, San Miguel Power, American-Hughes Airwest, American Air, Western Air, and Ernest H. Dean.

RETENTION

Retain 10 years.

DISPOSITION Transfer to the State Archives with authority to weed.

FORMAT MANAGEMENT

Paper: Retain in Office for 1 year after case closes and then transfer to State Records Center. Retain in State Records Center for 9 years and then transfer to State Archives with authority to weed.

APPRAISAL

Administrative Historical

This disposition is based on the historical value to researchers interested in early cases handled by the Attorney General's Office and business activities in Utah.

PRIMARY CLASSIFICATION

Public

SECONDARY CLASSIFICATION

Protected. UCA 63G-2-305 (2008)

Good idea to familiarize yourself with your entities' retention schedule.

4. Records Sharing



How Do I Get Access to Records through GRAMA?

1. Make a “GRAMA” request. § 63G-2-204
2. By Court Subpoena. § 63G-2-207
3. By Sharing Records. § 63G-2-206

Why should we share?

In a sense, we are all a part of a big
happy Utah family...

So if you are requesting a record from another Utah governmental entity, or you receive a request from another Utah governmental entity, you should use...

The “sharing records” provisions in
GRAMA.

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It just kind of makes sense.

Remember:

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UNLESS... the governmental entity is entitled by law to inspect a record (always exceptions).

How do I share non-public records with another governmental entity?

1. The entity must have a legal interest in the records.

Has to be something more than “I would like to see your records.”

How do I share non-public records with another governmental entity?

Examples of a “legal interest” in the records:

1. Serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction. -206(1)(a).

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The Department of Administrative Services

Division of
**Archives &
Records Service**

SERVICES ELEVATED



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Office of the
Utah State Auditor

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4. Is one that collects information for presentence, probationary, or parole purposes. -206(1)(d).



...to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

DO

- Pay Fine/Fees Online 
- Respond to Juror Notice (Jury Room)
- Request a Court Interpreter
- Solicitud de intérprete judicial
- Request a Transcript
- Court Case Look up
(XChange Subscription Required)
- Electronically File (Attorneys Only)
- Court Calendars (Find a Hearing Date)

SEARCH

- Appellate Opinions and Cases
- Court Contacts Statewide
- Utah Code (like 30-3-37)
- Court Rules (like URCP 26)
- Find a Hearing Date (Court Calendars)
- Find a Divorce Education Class
- Warrants (Dept of Public Safety)

Search

SELF HELP



- Consumer Law (Bankruptcy, Debts...)
- Court Rules and Procedures
- Criminal Justice
- Families and Children (Marriage, Divorce, Custody...)
- Finding Legal Help
- Housing (Eviction)
- Juvenile Justice (Child Welfare)

- Estates and Probate (Guardians, Wills...)
- Mediation
- Online Court Assistance Program (OCAP)
Document Preparation
- Protection from Abuse (Protect. Orders)
- Recursos en Español
- Self-Help Center
- Small Claims

- Utah Courts Performance Measures
- eFiling Information
- eRecords (Juvenile Court)
- Employer's Answers to Garnishment Interrogatories

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The Navigator is Out



Salt Lake County District Attorney

Sim Gill



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The District Attorney's Office is responsible for a wide variety of legal work, including prosecution of all felony criminal matters in Salt Lake County, as well as handling civil governmental legal work and government litigation.

Our staff of 226 Deputy District Attorneys, Paralegals, Investigators, Legal Secretaries, and other support staff comprise the largest criminal prosecutorial agency in the State of Utah.

To learn more about how the Salt Lake County District Attorney's Office serves the citizens of Salt Lake County, we invite you to use the links on the left to browse the website.

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4. Is one that collects information for presentence, probationary, or parole purposes. -206(1)(d).
5. The Legislature, a legislative committee, a member of the Legislature, or a legislative staff member. -206(1)(e).

The Grand Take away is...?

- Requests for records between governmental entities should be under the “sharing records” provisions and not under standard “GRAMA” requests.
- When governmental entities receive “shared records,” they are under the same records classification obligations as the originating entity.
- Since there are exceptions to the rules and they can be complicated, always consult your legal counsel before sharing any non-public records.

WHAT IS GRAMA?

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Pretty Simple!

5. Questions?

