

# ***GRAMA and the News Media:*** **Some Practical Advice and** **Observations**

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# First Principles

- GRAMA is Fundamental to Self Government
  - Transparency
  - Empowerment
  - Accountability
  - Public trust



# First Principles

- *“People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.”*

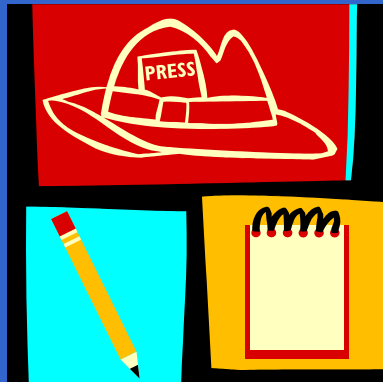
*Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 100 S. Ct. 2814, 2825 (1980)

- *“Openness safeguards our democratic institutions. Secrecy breeds mistrust and abuse.”*

- *United States District Judge David K. Winder*
- *Soc’y of Prof’l Journalists v. Sec’y of Labor*, 616 F. Supp. 569, 576 (D. Utah 1985)

# First Principles

- GRAMA is a Balancing Act
  - The statute reflects a careful balancing of competing interests – public access and accountability vs. privacy, commercial, public safety, government process, and other interests



# First Principles: The public cares about GRAMA



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# The public cares about GRAMA



# No. 1: Make it easy on yourself

- Clarify ambiguous requests – discussions welcome!
- Discuss format
- Provide the record in electronic format
  - Maintained that way and is reproducible
  - Any non-public information can be redacted without undue expenditure (§ 201(12)).
- Refer the requester to your website
- Discuss fees



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# No. 2: Require reasonable specificity – discuss with requester

- “Reasonable specificity.” (§ 204(1)(b))

Example:

“All emails concerning the new Salt Lake City parking meters between 2012 to date.”

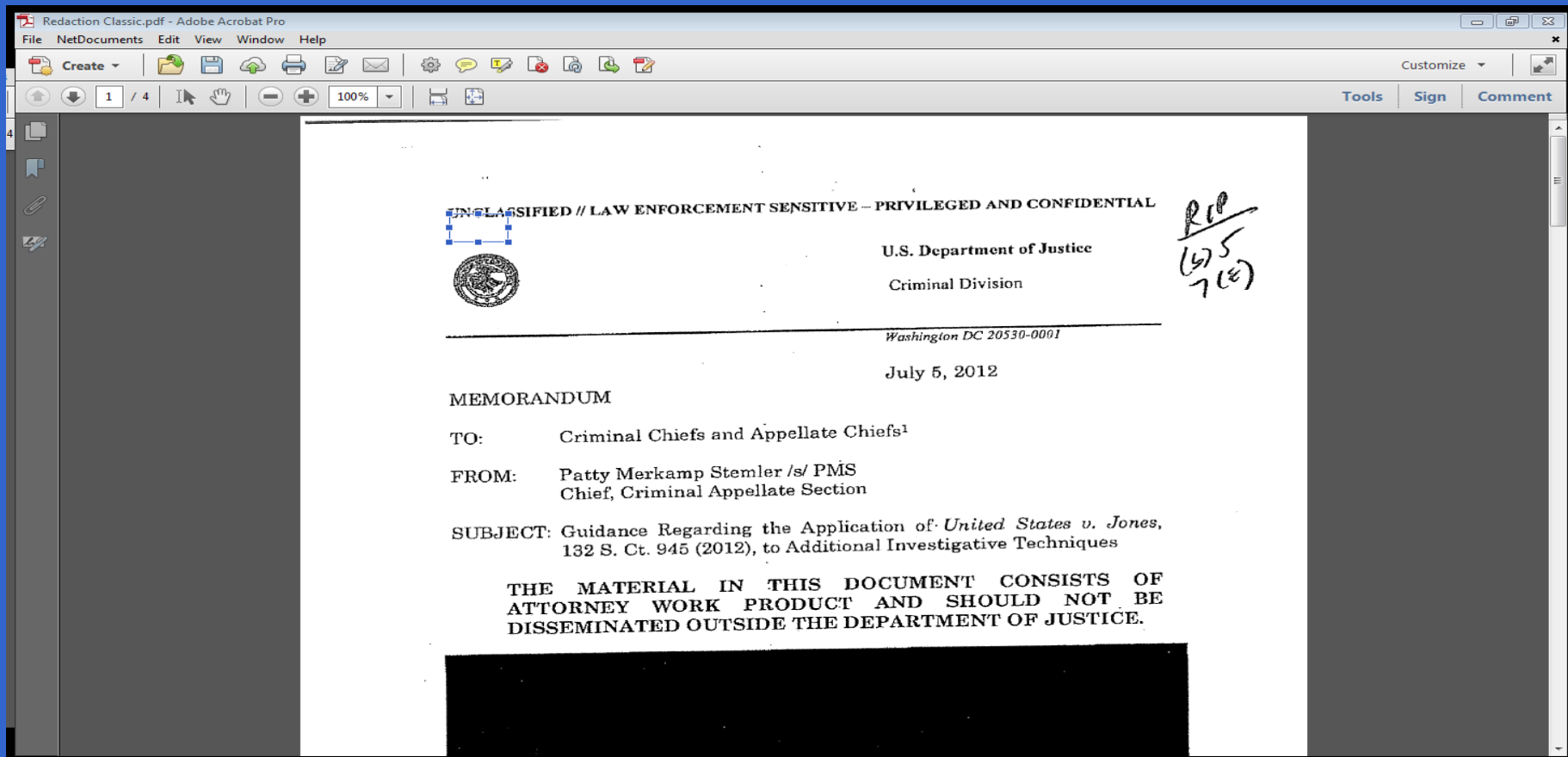
“All records, including emails, documenting complaints from users and others about the new Salt Lake City parking meters from their installation to date.”

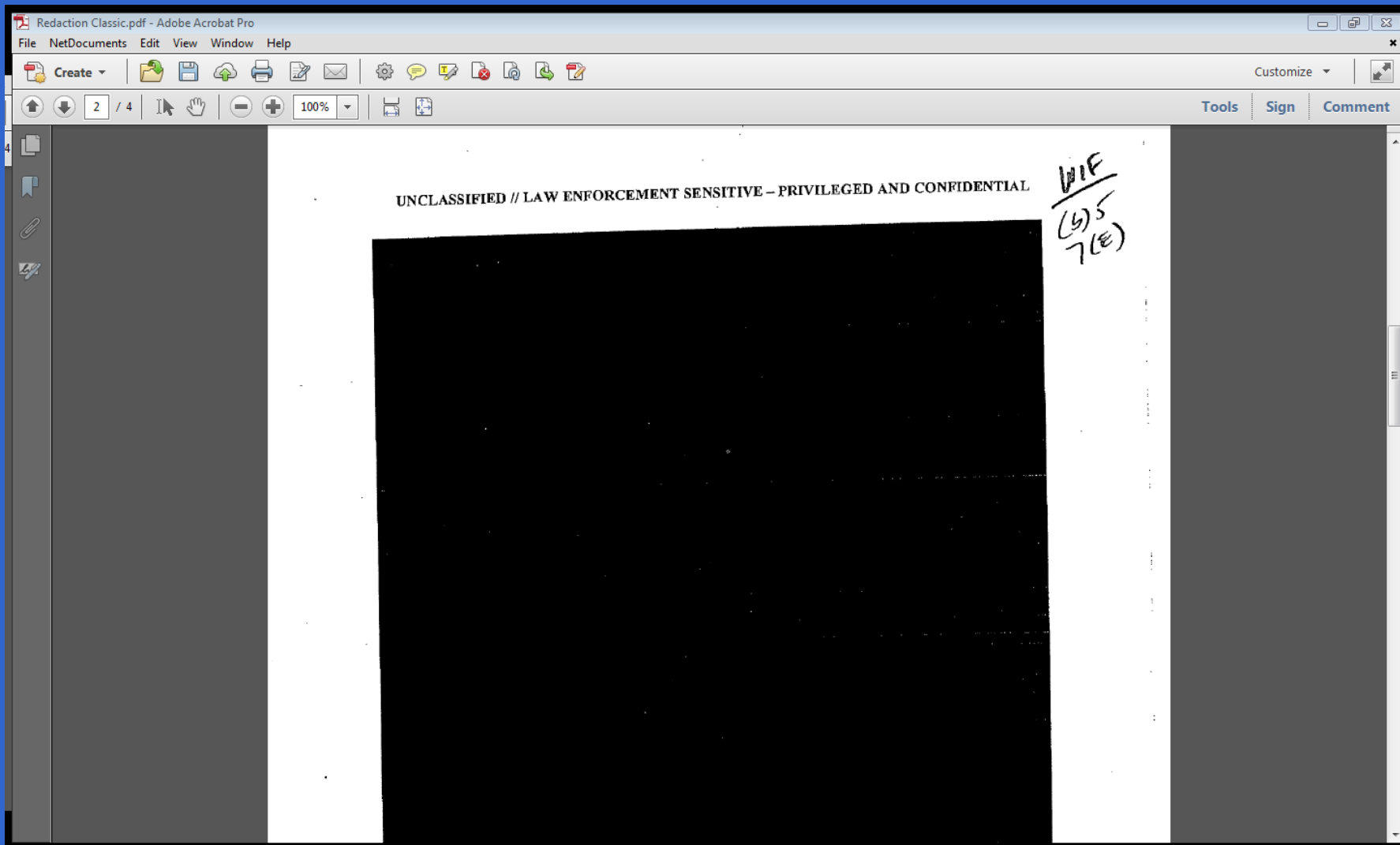


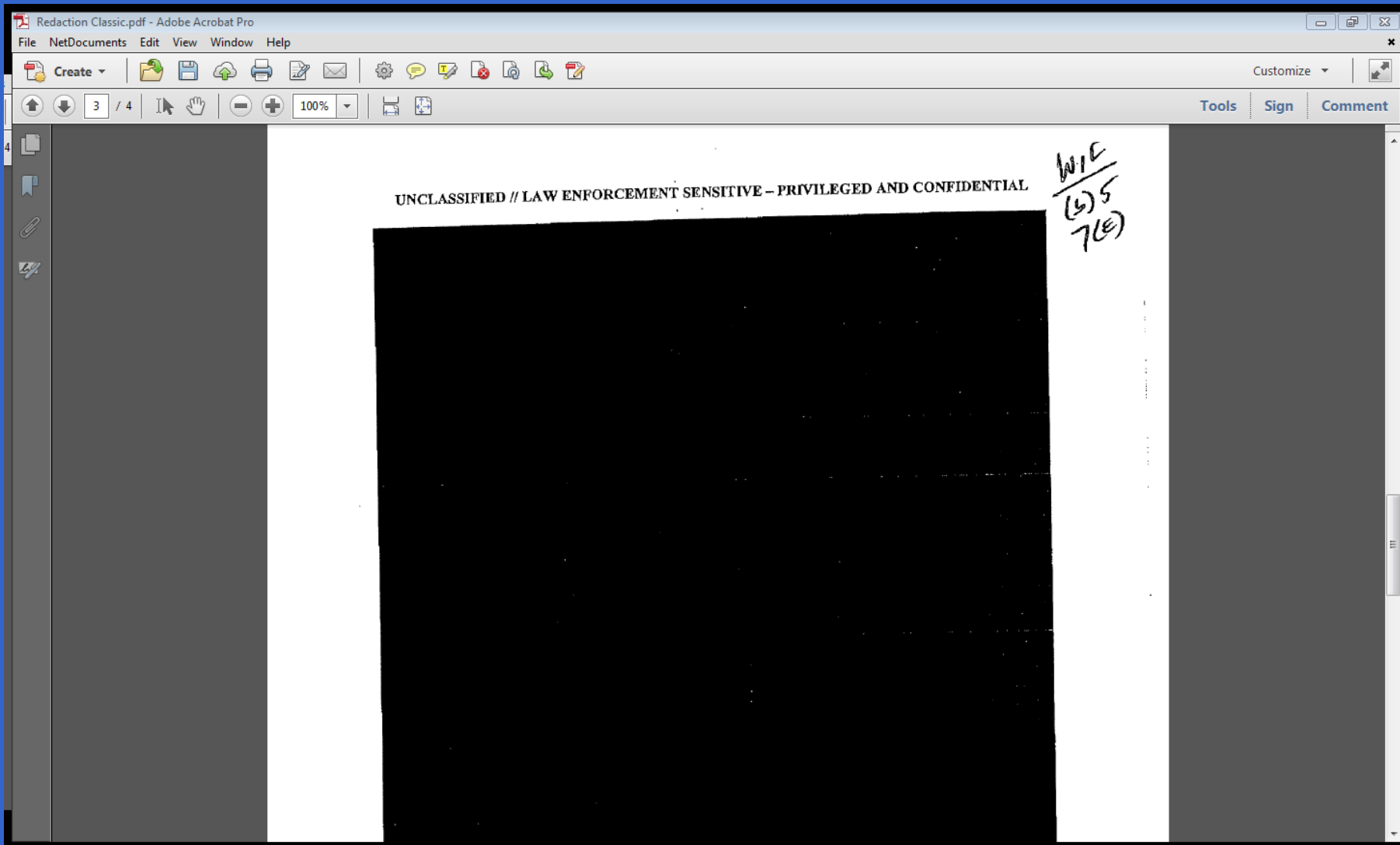
# No. 3: Remember redaction

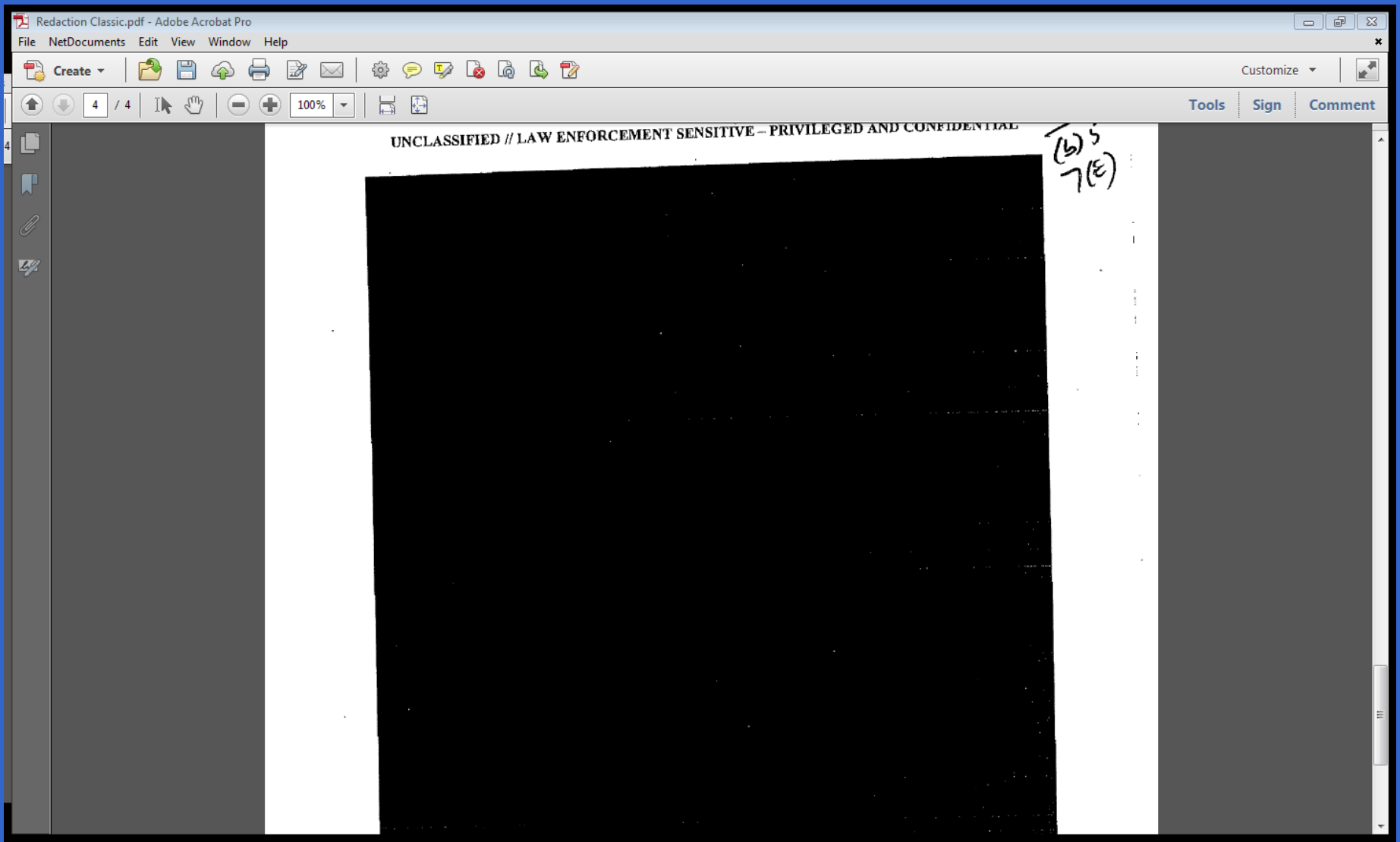
- Government has a duty to segregate public and non-public information in a record (§308)
- Examples:
  - Police reports
  - Investigative reports
  - Contracts

# Don't Get Carried Away









# No. 4: Dealing with denials

- Denials (§205)
  - describe the records or portions of records to which access was denied
  - citations to the specific statute, rule or regulation that exempt the record from disclosure
  - description of appeal procedure

# Dealing with denials

- Failure to respond within the statutory response time can be treated as a denial
  - 10 business days after receipt of written request
  - 5 business days for public interest requests (journalists)
  - Deadline may be extended for voluminous requests, segregation, legal review – tell the requester if you are extending the response deadline and for how long.

# No. 5: It's all about the balance

- A government entity may release a record properly classified as private or protected if the interests favoring access are equal to or greater than those favoring restriction of access (§ 201(5)(b)).
- Orem City manager case
  - Six finalists
  - Names and resumes properly classified as private but public interest favored release



# No. 6: Content is king

- Public access depends on the content, not form, of the record or where the record resides
- Record means “electronic data . . . that is prepared, owned, received or retained by a governmental entity” and is reproducible. (§ 103(22)).
- It really does not matter why requester wants the record.

# Content is king

- Government may “not use the physical form, electronic or otherwise, in which a record is stored to deny . . . the rights of a person to inspect and receive a copy of a record under this chapter.” (§ 201(11))
- Emails, text messages, and other forms of electronic communications are subject to GRAMA

# Maine Bans Texting to Conduct State Business

- Former state employee testified she was encouraged to use texting to communicate about state business because the messages were harder to access under Maine's open records law
- Governor Paul LePage enacted ban on state employees using text messaging and personal email accounts to conduct state business

# No. 7: Presume access – consider it a public service!

- Remember the presumption of access to records
- You are providing a valued public service just like other parts of government
- All government records are presumed to be public unless expressly provided otherwise by statute (§ 201(2))
  - Presumption of access applies at all levels of appellate review, i.e., administrative and judicial *Deseret News v. Salt Lake County (Utah Supreme Court 2008)*
  - If interests favoring and disfavoring access are of equal weight, tie goes to access (*Id.*)

# *Deseret News v. Salt Lake County*

- Administrative Reviews: default classification entitled to no deference
- Must consider changed factual circumstances, such as whether information is in the public domain

# No. 8: Things you don't have to do

- Create a record
- Compile, format, manipulate, package or summarize
- Provide record in particular format
- Fulfill unreasonably duplicative requests from the same person
- Fulfill a request for information available on a government website or publication

# No. 9: Some things really are free

- No charge for first 15 minutes of staff time
- No charge for inspection
- No charge for reviewing record to determine whether it is subject to disclosure.
- Fee waivers encouraged for public interest requests (journalists)
- May provide electronic copy in lieu of paper
- Public access reading room concept



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# Recent GRAMA Amendments

- Police body camera video presumptively public if recording outside of a home (Section 303(2)(g))
- Local appeals boards must contain 2 members of the public



# The End



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