HANDBOOK FOR THE UTAH GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT

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PREFATORY NOTE

This handbook is a basic guide to the Government Records Access and Management Act (GRAMA). Its purpose is to help in understanding and applying the Act. The Act should be consulted for specific questions. Of course, if there are any contradictions between the Act and this handbook, the Act controls.

The handbook contains general information. If you have a specific legal issue or problem, you should consult an attorney.

All references in this handbook are to sections of Title 63, Chapter 2, of the Utah Code, unless otherwise specifically noted. Decisions of the State Records Committee are available at http://archives.utah.gov/appeals/indxtabl.htm or by contacting the Committee's Executive Secretary at following address: State Records Committee, c/o Utah State Archives, 346 S. Rio Grande, Salt Lake City, Utah 84101.

The handbook was originally prepared in 1992 by the Government Affairs Division of the Attorney General's Office, John F. Clark, Richard D. Wyss, Laura Lockhart, Brian L. Farr, Betsy L. Ross and David Barton. Mark E. Burns has edited and updated the handbook on an annual basis since 2002. The excellent work of the original authors is gratefully acknowledged.

I. OVERVIEW: AN INTRODUCTION TO GRAMA

A. WHAT IS "GRAMA"?

The Government Records Access and Management Act (GRAMA) is a comprehensive law dealing with management of government records and access to those records. It is an attempt to balance the public's constitutional right of access to information concerning the conduct of the public's business, the individual's constitutional right of privacy in relation to personal data gathered by government entities, and the public policy interest in allowing government to restrict access to certain records for the public good. See § 102.

B. HOW DOES GRAMA WORK?

GRAMA establishes record classifications. To protect individual privacy, GRAMA allows certain records to be classified as "private" or "controlled." Records to which access may be restricted for the public good are classified as "protected." Access to a record depends on its classification.

- **<u>Public records</u>:** Under GRAMA, all records are public unless they fit within one of the categories exempt from public disclosure – private, controlled, protected, or limited. See §§ 201(2), 201(3)(b) and (c). In addition, GRAMA specifically identifies several kinds of records that are public. See § 301. Any requester may inspect a public record free of charge during normal working hours, subject to §§ 203 and 204. See § 201(1).

- **<u>Private records</u>:** Private records are records about individuals that contain personal information, such as medical or personal financial information. See § 302. Private records are ordinarily available only to the subject of the record or to a person with written permission from the subject.

- **<u>Controlled records</u>:** If a governmental entity reasonably believes that release of a medical, psychiatric, or psychological records to the individual who is the subject of that information would be detrimental to the subject's mental health or to the safety of any individual, or would constitute a violation of normal professional practice and medical ethics, the record may be classified "controlled." See § 303. Controlled records ordinarily may be released only to a physician, psychologist, certified social worker, insurance provider or agent, or a government public health agency with a release from the subject, and that person or entity may not disclose the information to the subject. See § 202(2).

- **<u>Protected records</u>:** Protected records are records that may be kept confidential to protect various interests, including:
  - business interest in the case of information that would give competitors an advantage if disclosed, and
  - the public interest in the case of information where confidentiality is necessary to prevent persons from gaining an unfair advantage by means of information held by their government.

Protected records are originally available only to the person that submitted the records or to an individual who has written authorization from all individuals or entities whose interests are sought to be protected. A 2001 amendment also allows disclosure of protected records to the owner of a mobile home park, subject to the conditions of Utah Code § 41-1a-116(5).

- **<u>Limited records</u>:** Access to some government records is limited by the specific law that authorizes or requires the keeping of the record. Examples include the Family Educational Rights & Privacy Act (FERPA), the federal Health Insurance Portability & Accountability Act of 1996 (HIPAA) and federal Medicaid laws. If there is an applicable statute, federal regulation, or court rule, GRAMA only applies to the extent that it does not conflict with that statute, regulation or rule. See §§ 201(3)(b) and 201(6).

Each of these categories is described in greater detail in Part V of this Handbook. It is important to note that a record may not be classified as private, controlled, protected or limited unless specifically authorized by GRAMA or another law, and public release of a record may not be prevented unless confidentiality is specifically allowed by GRAMA or another law. See §§ 201(4) and 201(6). It should also be recognized that in some circumstances, any record may be released to the public. See § 202(9).

C. GRAMA APPLIES TO GOVERNMENT RECORDS. WHAT IS A RECORD?

The definition of "record" is broad and includes anything that provides information in a documentary form. Letters, memos and reports on paper are obviously documents, but so are photographs, tape recordings, maps and information stored electronically, as on a computer disc. See § 103(19)(a).

There are some objects, such as physical evidence, that are not records even though they may contain information. Water samples, for example, may provide information about the quality of the water from which the samples were taken, but the samples themselves are not records. The resulting laboratory reports are records.

GRAMA also exempts some items from its definition of a record. For example, temporary drafts, personal notes and personally owned documents are not records. The exemptions are described in Part V of this Handbook.

D. GRAMA APPLIES TO GOVERNMENTAL ENTITIES. WHAT IS A GOVERNMENTAL ENTITY?

The term "government entity" is broadly defined in § 103(10). All state agencies are governmental entities. Political subdivisions (like cities and counties), the Legislature, and the Judiciary are also governmental entitles, although the applicability of GRAMA to these entities is limited. See Part 7 of GRAMA.

II. HOW TO MAKE A REQUEST UNDER GRAMA

A. FORM OF REQUEST. A request for records must be in writing and must contain:

- The requester's name;
- The requester's mailing address;
- The requester's daytime telephone number, if available; and
- A description of the records requested that identifies the record with reasonable specificity.

See § 204(1). Forms for making a request for records are included in Appendix A, although a requester is not required to use any particular form so long as the above information is provided. It is also not required that the requester specify that the request is being made under GRAMA, although it is advisable to do so in order to avoid any confusion. In addition, in order to avoid any delay in the governmental entity's response, when requesting copies or requesting that the information be provided in a format other than that kept by the agency, it is advisable to specify a dollar amount that is being pre-authorized for copying or compiling fees.

B. IDENTIFICATION REQUIRED FOR ACCESS TO PRIVATE, CONTROLLED, PROTECTED AND OTHER LIMITED RECORDS. Requesters should be aware that some records can ordinarily be released only to certain persons specified in GRAMA. See § 202. In order to protect the privacy of medical records, for example, those records may be released only to the individual or to a person with authorization from the individual. Moreover, a governmental entity is obligated to get some proof of the subject's identity, or the identity of any person who has a consent for release, power of attorney or other authorization form the subject, before it can release the record to that person. Anyone requesting access to these records should be prepared to provide proof of identification. If there is any uncertainty as to the identity of the requester, it may be necessary in some cases for the government entity to obtain require picture identification or a notarized signature with the request. See § 202(6). These requirements are described in greater detail in Part III.A.9 of this Handbook.

C. WHAT IS A REASONABLY SPECIFIC REQUEST? A request should be specific enough that a governmental entity employee who is familiar with the agency's records will understand which records are being sought. *Schwarz v. University of Utah*, State Records Comm. Dec. No. 05-04; *see also*, *Haik v. Town of Alta*, State Records Comm. Dec. No. 04-11(appeal pending); *Tolton v. Town of Alta*, State Records Comm. Dec. No. 03-03 (appeal pending). A request for all records on a broad topic within a governmental entity's jurisdiction will ordinarily not be specific enough to meet that test. For example, the following requests would not be specific enough to give a governmental entity employee a clear idea of the specific records the requester had in mind:

- A request for records about ground water pollution or lead contamination from the Department of Environmental Quality;
- A request for records related to child support enforcement from the Department of Human Services; or
- A request for fishing information from the Department of Natural Resources.

In contrast, the following requests should be sufficiently specific to give adequate guidance to a person responding to a request:

- A request to the Department of Environmental Quality for records about ground water pollution or lead contamination associated with named sites;
- A request to the Department of Human Services for records specifying the number of child support enforcement cases during the past two years;
- A request to the Department of Natural Resources for information related to fish stocking in particular waters during the past two years.

It is important to write a request as precisely and narrowly as possible in order to avoid unnecessary delay or additional fees. One way to do that is to consult the governmental entity to request assistance in formulating a complicated request.

D. WHERE TO SEND A REQUEST. A governmental entity's rules should specify where and to whom requests for access shall be directed. To find out if the agency has such a rule, check the Utah Administrative Code or simply ask the government office or State Archives. If the agency does not have a rule, the request should be sent to the person or division within the government office that is expected to have the records.

Response to a request may be delayed if it is not properly directed. See §§ 204(2) and 204(6).

III. HOW TO RESPOND TO A RECORDS REQUEST

A. RESPONDING TO REQUESTS FOR ACCESS.

1. **Log the request.** The time for response begins to run when the request is received, so it is important to note the date it is received by either entering it in a log or date-stamping the request.

2. **Determine if GRAMA applies.**

   a. **Is there a more specific law?** Access to some government records is controlled by a specific law that authorizes or requires the keeping of the record. If there is an applicable statute, federal regulation, or court rule, its provisions regarding access to the record control and must be followed. In that event, GRAMA only applies to the extent that it does not conflict with that statute, regulation or rule. See § 201(6).

   b. **Is the information requested a "record"?** If it is not, GRAMA does not apply. To be a record, all of the information in the original must be reproducible by photocopy, or other mechanical or electronic means. Books in a public library and proprietary software are not records for GRAMA purposes. GRAMA also specifies that other kinds of information are not considered records, such as temporary drafts and similar material, daily calendars and some personal notes. See § 103(19) and Part V.A.1 of this Handbook. If the information requested does not fit within GRAMA's definition of a "record," a request may be denied.

3. **Determine and note time limit for response** (if the governmental entity cannot respond immediately).

   a. **Five business days or ten?** A governmental entity is required to respond as soon as reasonably possible, but no later than ten business days after receiving the written request, or five business days after receiving a written request if the requester demonstrates that expedited response benefits the public rather than the person.

      Any person who requests information for a story or report for publication or broadcast to the general public is presumed to be acting for the benefit of the public and therefore entitled to a five-day response. See § 204(3).

   b. **If an extension of time is necessary, when will it expire? GRAMA** allows an extension of time for response in certain extraordinary circumstances. A summary of permissible circumstances, and the corresponding extended deadlines for response is found in Table 3-1.

TABLE 3-1: EXTRAORDINARY CIRCUMSTANCES	
REASON	EXTENSION
Record loaned out for use by another governmental entity	5 days for entity to return record unless return would impair the holder's work.
Record being used for audit	Notify requester when record is available.
Request is for a voluminous quantity of records (or, under a 2005 amendment, the requester seeks a substantial number of records in requests filed within five working days of each other)	As soon as reasonably possible.
Governmental entity has a large number of record requests	As soon as reasonably possible.
Governmental entity must review a large number of records in order to respond to the request	As soon as reasonably possible.
Legal issues require review by counsel	5 day extension.
Segregation requires extensive editing	15 days from the date of original request.
Segregation requires computer programming	As soon as reasonably possible.

See §§ 204(4) and (5) for these and other provisions regarding extensions. If legal counsel is required to determine if a record may be released, the governmental entity should forward a copy of the request to its attorney immediately.

If the governmental entity claims an extension, it must provide the requester a notice that describes the circumstances upon which it is relying, and specifies the date when the records will be available. The notice must be sent within the five or ten day time limit for response listed above in Part III.A.3.a of this Handbook. See § 204(3)(a)(iv). A sample notice of extension form is included in Appendix A. If the requester believes the extraordinary circumstances do not exist or that the time specified is unreasonable, the requester may file an appeal with the head of the agency as allowed by § 401.

c. **Effect of failure to respond within time limit.** Failure to respond within the applicable time limit is the same as a denial. See § 204(7); Powell v. Lehi City, State Records Comm. Dec. No. 02-10.

d. **How to count days.** Since GRAMA does not specify how days shall be counted, it is suggested that they be counted as provided in Rule 6 of the Utah Rules of Civil Procedure. Following that Rule, and unless specifically provided otherwise, the first day counted is the day following receipt of the request. When the period of time is fewer than 11 days (or when the period is described in "business days"), Saturdays, Sundays, and legal holidays are excluded in the computation. If the last day of the period falls on a Saturday, Sunday, or legal holiday, the period runs to the end of the next day which is not a Saturday, Sunday, or legal holiday.

4. **Determine if the request describes the records requested with reasonable specificity.** If a governmental entity does not understand what is being requested, it should attempt to contact the requester to seek clarification. If it is not able to get sufficient clarification to enable it to respond to the request, or if the request is not reasonably specific (see Part II.C of this Handbook, above), the request may be denied. See §§ 201(7) and 204(1). Instructions for denials are listed in Part III.A.11.

5. **Determine classification.** Before a governmental entity can decide if a person is authorized to see or copy a record, it must determine how the record has been or should be classified.

a. **Check classification schedule.** To find out whether a record has been classified, a governmental entity should review its Classification Schedule. A copy of the classification schedule should be available from the governmental entity's records officer or from State Archives.

b. **If the record is not listed in the classification schedule, check the applicable statute.** Subsection 301(1) lists records that GRAMA classifies as public, unless access is restricted by court order or another law. Subsection 302(1) lists certain records containing information on individuals that GRAMA classifies as private. If the records are classified by the statute, that classification governs.

c. **Check the requested record itself.** If a court order affecting access to a particular record has previously been entered, a copy of the order should be affixed to, or referenced by, the record. If there is a court order, it governs access and its provisions must be followed. (See Part X.B of this Handbook regarding what constitutes a proper court order).

Additionally, if the record contains a trade secret, commercial information, or non-individual financial information, the record might also be covered by a business confidentiality claim that was filed by the person who submitted the information. If so, that claim would require the record to be

protected. Even if the government office denies the submitter's business confidentiality claim, the record may not be disclosed to anyone who is not entitled to access to protected records until the time for appeal has expired, including judicial appeal. See § 308.

d. **If a record is not classified, classify it.** GRAMA provides that a record does not have to be classified until it is requested. See § 306(2). Possible classification categories and classification procedures are described in Part V of this Handbook.

e. **If a record is classified but the classification seems wrong, consider reclassification.** GRAMA allows a governmental entity to reclassify a record series, a record, or information within a record, at any time. See § 306(3). If the record classification is wrong, reclassification is appropriate.

f. **If no exemption applies, but the record should not be released, consider § 405.** In extraordinary circumstances, where it appears that great harm could occur unless a record is treated confidentially but no exemption applies, GRAMA allows a court to protect the record from disclosure. See § 405. See also Part X.D of this Handbook. A governmental entity that is considering using this provision should consult with legal counsel.

6. **Based on the classification, determine if the requester is entitled to access.** The designated classification of a record determines who may have access to it.

a. **If a record is classified "private,"** it ordinarily may only be disclosed to the subject of the record, to certain legal representatives of the subject, to someone with a written consent for release signed by the subject, or, if the record is a medical record, to health care providers if "consistent with normal professional practice and medical ethics." See § 202(1).

b. **If a record is classified "controlled,"** it ordinarily may be disclosed only to a physician, psychologist, certified social worker, insurance provider or agent, or a government public health agency that presents the documentation required by § 202(2).

c. **If a record is classified as "protected,"** it may be disclosed only to the person who submitted the record, or to an individual that has a power of attorney or release signed by all of the individuals and entities whose interests were sought to be protected. See § 202(4).

d. **If a record is classified as "public,"** it may be disclosed to anyone (and shall be disclosed, upon request), provided it does not also contain information that is classified as private, controlled, or protected. If the record does contain private, controlled, or protected information, that

information must be segregated and not released, unless the requester is otherwise entitled to access to that information, as set forth above.

e. **Court order or Legislative subpoena.** Records should also be released to a person with a proper court order or legislative subpoena. See § 202 of GRAMA and Part X.B of this Handbook.

7. **Requests by government - additional considerations.** In circumstances specified in GRAMA, a governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, another state, the United States, or a foreign government. See Part VII of this Handbook and § 206.

8. **Research requests - additional considerations.** Private or controlled records may be disclosed for research purposes to a requester who is not otherwise entitled to access if the conditions of subsection 202(8) are met. Every government office should have a policy regarding who is authorized to approve research requests. If so, the request should be referred to that person. If not, it is recommended that the decision should be made at the division director level or higher. Any questions as to who is authorized to approve research requests may be directed to the appropriate division director. The decision maker must make sure the provisions of § 202(8) are complied with.

9. **If the requested record is not public, check the requester's identification and any other required documentation.** If the requested record is not public, but the requester claims to be a person authorized by statute to have access to the record, the agency must check the requester's identification to make sure the requester is entitled to access. See § 202(6). A driver's license is an example of an appropriate form of identification.

   Private, controlled, limited, or protected information should not generally be given out by telephone because of the difficulty of verifying the requester's identification over the telephone. Moreover, an agency is not even required to respond to a telephone request because it is not a "written" request. If the requester appears to be someone who is entitled to access, the agency may want to invite him/her to come in to the agency to provide identification, or invite him/her to submit a written request for copies (see Part III.B of this Handbook). An exception can be made where the requester gives a previously issued secret number or access code to prove identification. (If secret numbers or access codes are used, it is recommended that an agreement regarding access be entered into at the time the number or code is issued. The agreement could contain provisions relating to conditions of access, hold harmless agreements etc.).

In unusual circumstances, it may be appropriate to confirm the identity of an individual making a request by telephone by requiring him/her to provide a notarized written request or other information known only to that person, such as a Social Security number.

If GRAMA requires other documentation (such as a power of attorney, a release, or an acknowledgment) the agency should also make sure that that documentation is presented and reviewed, that it satisfies the requirements of GRAMA, and that the agency is satisfied that release is appropriate under the document's terms. See § 202. Any questions should be directed to the agency's legal counsel.

10. **Allow access to records if the requester is entitled to inspect.** Every person has the right to inspect a public record free of charge. See § 201(1). Similarly, those entitled to access to private, controlled, or protected records, as set forth in paragraphs 6 & 7 above, should be allowed to inspect the records without charge. See § 203(5)(b). If the requester is entitled to inspect the requested record, the agency should allow him/her to have access to it. <u>If the records contain information that the requester is not entitled to inspect, that information must be segregated. It may be necessary to make copies in order to do so. See Part III.B.5. of this Handbook.</u>

    In some circumstances where the integrity of an original record may be compromised, it might be necessary for a governmental entity to take steps to ensure original documents are not damaged during an inspection. For example, in a case involving an inmate who wanted to inspect 17 original public contracts, the Department of Corrections made the contracts available to the inmate, but only allowed the inspection to take place in the presence of a guard. Since every person has a right to inspect a public record free of charge, it is unlikely that the prison would be justified in charging for the guard's time spent monitoring the inmate's inspection of said contracts. See <u>Hickey v. Dept. of Corrections</u>, State Records Comm. Dec. No. 01-03 and <u>Tolton v. Town of Alta</u>, State Records Comm. Dec. No. 03-03.

11. **Deny the request by issuing a written denial if the requester is not entitled to access.** If the government entity denies the request in whole or in part, the entity must provide a written notice of denial to the requester either in person or by sending the request to the requester's address. See § 205(1). The notice must satisfy the requirements of § 205(2). It is important to keep track of the date that the notice was sent or delivered so that if the requester appeals, it can be determined whether the appeal was filed within the required time limit. A mailing certificate similar to that specified in Part IV.A.2 of this Handbook may be used.

    A sample form for a notice of denial is included in Appendix A, but governmental entities should feel free to elaborate on the information provided in that form. Although an appellate body is not bound to follow the decision of a governmental entity, a well-reasoned decision may be persuasive.

A governmental entity may not destroy or give up custody of any record to which access was denied until the period for filing an appeal has expired or the end of the appeals process, unless otherwise required by a court or agency of competent jurisdiction. See § 205.

B. RESPONDING TO REQUESTS FOR COPIES.

1. **Determine if the requester is entitled to access.** Follow the procedures in Section A above. If the requester is not entitled to access, he/she is not entitled to copies. If the governmental entity denies a request, a notice of denial should be issued. If a request for copies of private, controlled, limited or protected records is received by mail, the requester is still required to provide proof of identification. That could be accomplished by inviting the requester to come to the agency to pick up the copies and present identification. Another alternative is for the requester to submit an affidavit like the one in Appendix A. Reasonable accommodation should be made for people with disabilities.

2. **Determine if there will be a fee.** A governmental entity may charge a reasonable fee to cover its actual cost of duplicating a record if the entity complies with the GRAMA provision for establishing fees. See § 203. A requester ordinarily should not be held liable for any fees that he/she did not approve or reasonably anticipate. For that reason, it is reasonable, but not mandatory, for a governmental entity to require that a requester approve anticipated fees before it begins to copy records.

   A governmental entity may also provide copies without charge, and is encouraged to do so when it determines that:

   - Releasing the record primarily benefits the public rather than an individual or business entity;
   - The individual requesting the record is the subject of the record, or an individual entitled to access to a private or controlled record; or
   - The requester's legal rights are directly implicated by the information in the record, and the requester is impecunious (too poor to pay). See § 203(4).

   The government office representative who responds to the request should check the agency's policy regarding the amount of fees and procedures for granting fee waivers. Then, if the requester is entitled to copies, the representative should determine if a fee will be charged and, if so, how much.

   The agency may also allow the requester to bring his/her own copy machine to the government office. If the requester makes copies on his/her own machine, copy fees may not be charged. See § 201(9)(b).

3. **Determine if the fee should be collected before processing the request.** A governmental entity may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50.00 or if

the requester has not paid fees from previous requests. If appropriate, collect the fees in advance. Any prepaid amount in excess of the fees ultimately charged must be returned to the requester. It should be noted that a governmental entity need not collect fees in advance, and may not require advance payment of fees except as provided in GRAMA . See § 203(8).

4. **Segregate disclosable portions from non-disclosable portions, if required.** Section 307 provides that if the record contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect, and, if the information that the requester is entitled to inspect is intelligible on its own, access should be allowed to the information that the requester is entitled to inspect. Access to the information that the requester is not entitled to inspect may be denied by issuing a notice of denial, as set forth in Part III.A.11 of this Handbook.

   Furthermore, if there is more than one person that is the subject of a private or controlled record, the portion of the record that pertains to another person must be segregated from the portion that the requester is entitled to inspect. See § 202(3).

   Since the Legislature has expressed its intent that Utah information practices be consistent with nationwide standards (see § 102(3)(d)), federal case law regarding segregation of information offers some guidance in the application of these provisions. Federal courts have held that information is not reasonably segregable if:

   - The process of segregation will result in an unintelligible document;
   - The disclosable material is so inextricably intertwined with the non-disclosable that segregation is not feasible;
   - The disclosable information is relatively sparse, and is closely interspersed with non-disclosable information; or
   - Disclosure of the nonexempt information would be revealing of, and endanger the confidentiality of, the exempt information associated with it.

   These standards should provide guidance to segregation decisions under GRAMA. Doubts about whether the releasable portion is intelligible should be resolved in favor of release to the requester.

5. **Make copies or allow requester to make them.** If the requester is entitled to access and any advance fees have been paid or approved, make the copies. If a person requests copies of more than 50 pages of records, and if the records are contained in files that do not contain records that are exempt from disclosure, the governmental entity may provide the requester with the facilities for copying the requested records and require that the requester make the copies him/herself. The agency may also allow the requester to use his/her own machine at governmental office and waive the fees. See § 201(9).

6. **Collect any uncollected fees and release copies.** Note that GRAMA does not

prevent a governmental entity from mailing copies to a requester at the same time it submits a bill for the fees.

C. SUBPOENAS, ORAL REQUESTS AND DUPLICATIVE REQUESTS.

1. **Subpoenas and discovery requests.** Subpoenas and other methods of discovery under state or federal statutes or rules of procedure are not "written requests" under GRAMA. See § 207. They do not authorize or require access to records to which access is restricted by GRAMA. The proper way for a court to require access to records under GRAMA is by a court order that meets the requirements listed in Part X.B of this Handbook.

   Still, subpoenas and discovery requests must not be ignored. If a government office receives a subpoena or discovery request, the government office should notify the attorney that represents the agency. If the subpoena or discovery request is for records that are classified as public, legal counsel will probably direct the agency to comply with its terms. If the subpoena or discovery request is for records that are private, controlled, or protected, legal counsel will probably contact the attorney or other person that initiated the request and explain that GRAMA governs access. If the matter cannot be resolved, legal counsel will likely file a motion to quash the subpoena or the request.

2. **Oral requests.** A governmental entity may allow access to and provide copies of a record pursuant to an oral request if the requester is entitled to access and if the copy fee is paid. However, if the governmental entity does not intend to respond to the request promptly by allowing access or copying at the time the request is made, the requester should be instructed to file a written request.

3. **Duplicative requests.** Governmental entities are not required to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person. See § 201(8)(c). If such requests are not fulfilled, a written denial should be issued as described in paragraph III.A.11 above.

IV. APPEALS

A. APPEALS TO AGENCY HEAD.

1. **Procedure.** Any person aggrieved by a governmental entity's access determination may appeal the determination of the governmental entity by filing a notice of appeal with the chief administrative office of the entity within 30 days of the entity's determination. Requirements regarding content of the notice, the governmental entity's responsibility to notify business confidentiality claimants of the appeal, and time limits for the agency head to make a decision, are contained in § 401(5)(b). The governmental entity is required to send written notice of the decision to all participants. See § 401(7) for requirements of the notice.

2. **Mailing certificate should accompany notice of officer's decision.** The mailing certificate is important in establishing the date that the time for appeal begins to run. It should be signed by the person who mails the decision to the parties and may be in substantially the following form:

   Certificate of Mailing

   I hereby certify that on the __ day of ___, 200_, I mailed a true and exact copy of the foregoing decision, postage prepaid, to the following:

   (List names and addresses of parties)
   (signature)

   The agency should keep a copy of the decision and the mailing certificate for its records.

3. **Authority of chief administrative officer.** In addition to determining whether the classification of the requested record is proper and whether the person making the request is entitled to access, the chief administrative officer is authorized to weigh the various interests and public policies pertinent to classification and disclosure or non-disclosure. If the interests favoring access outweigh the interests favoring restriction of access, the chief administrative officer may order information that the agency has properly classified as private or protected be disclosed to persons who are not otherwise entitled to access under GRAMA. The officer may not, however, order disclosure of information that is properly classified as controlled. See §§ 401(6) and 201(5)(b) of GRAMA, and Part V of this Handbook.

   There is nothing in GRAMA that prevents the chief administrative officer from contacting other persons that would be affected by a record request, such as an individual with a potential privacy interest, and allowing him/her to participate. There may be practical problems with this, however, since the time constraints GRAMA establishes still apply.

4. **Considerations in exercising the authority to weigh interests.** The Legislature has expressed its intent that when the interests favoring access are equal in weight to the interests favoring restriction of access, public access should prevail. See § 102(3)(e). In the case of private records, it is often prudent to allow an individual's privacy interest to prevail at the agency level since the individual is not given the right to defend his/her interest at that level.

5. **Extraordinary circumstances.** If a governmental entity, in its initial response to a record request, determines that additional time is needed to respond to a request because of "extraordinary circumstances" (see Part III.A.3 of this Handbook), the requester may appeal the determination to the agency head. See § 401(1)(b). In such a case, the agency head should review the extension for compliance with GRAMA and for reasonableness, bearing in mind the agency's responsibility to respond to the request "as soon as reasonably possible."

6. **Delegation.** The duties of the chief administrative officer under this section may be delegated. See § 401(9).

7. **How to count days.** See Part III.A.3.d for information on counting days.

B. APPEAL OF DECISION OF AGENCY HEAD TO COURT OR STATE RECORDS COMMITTEE.

1. **Options for appeal by requester.** A requester may appeal the denial of a request by the chief administrative officer either to the State Records Committee or directly to the district court. See § 402(1). The proceeding before the Records Committee is less formal and was intended particularly for those requesters who choose not to be represented by an attorney, though a requester who is represented by an attorney may also appeal to the Records Committee. If a requester is not satisfied with the decision of the Records Committee, that decision may be appealed to the district court. See § 404. Under § 404(1)(c) and (d), the records committee must be served as a necessary party to a petition for judicial review.

2. **Appeal by other aggrieved persons.** Any aggrieved person other than a requester, including persons who did not participate in the governmental entity's proceeding, may appeal the chief administrative officer's decision to the Records Committee, but may not appeal directly to the district court. See § 402(2).

3. **Procedure on appeal.** The procedures for an appeal before the State Records Committee are set forth in § 403. This section specifies the time limit for filing an appeal, required contents of the notice of appeal, time for setting a hearing, other notice requirements, submission of written argument, intervention by interested persons, limits on discovery, requirements regarding time limit and content of the committee's order. The procedure for an appeal to the district court are set forth in § 404.

4. **De novo review.** Appeals to the State Records Committee and to the district court are to be conducted "de novo." See §§ 403(10)(c) and 404(7)(a). The term "de novo" has more than one meaning. Univ. of Utah v. Industrial Com'n, 736 P.2d 630, (Utah 1987). In the context of GRAMA it is clear that "de novo" means that both the Records Committee and the district court make their own independent decisions and do not simply review the decision being appealed. However, although these tribunals would not be bound by an agency's determination, a well-reasoned decision may be persuasive.

5. **Agency right/responsibility to respond.** In proceedings before both the Records Committee and the district court, the agency is allowed to present evidence and written and oral argument. See § 403(5). In the district court, the appeal is commenced by the petitioner filing a complaint. If the agency is not the petitioner, the agency is required to file an answer to the complaint within 20 days. Failure to do so could result in a default judgment being entered against the agency. A governmental entity that receives a complaint should immediately forward it to its legal counsel.

6. **In camera view.** Both the Records Committee and the district court may review the disputed records "in camera" in an appeal that is before them. See §§ 403(9)(a) and 404(6). This means it may review the disputed records in private.

7. **Weighing authority on appeal.** Both the Records Committee and the district court have the authority to consider various interests and public policies pertinent to the classification and disclosure or non-disclosure of requested records and to order disclosure of records properly classified as private, controlled, or protected to someone that would not ordinarily be entitled to access, if the interest favoring access outweighs the interest favoring restriction of access. See §§ 403(11)(b) and 404(8)(a). The weighing authority of the Committee and the court is more broad than the authority of the chief administrative officer. **Both the Records Committee and the court may exercise the weighing authority in relation to private -tier 1 and controlled records and order release of those records, authority not granted to the chief administrative officer.**

8. **Time limits are jurisdictional.** If an aggrieved party, including a governmental entity, does not appeal a decision within the time allowed by GRAMA, the right to appeal is lost. Failure to file an appeal within the required time limit deprives the court of subject matter jurisdiction. As the Utah Supreme Court has noted, "It is axiomatic in this jurisdiction that failure to timely perfect an appeal is a jurisdictional failure requiring dismissal of the appeal." Prowswood, Inc. v. Mountain Fuel Supply Co. 676 P.2d 952, 955 (Utah 1984).

9. **How to count days.** See Part III.A.3d for information about how to count days.

V. CLASSIFYING RECORDS

A. CATEGORIES. Records governed by GRAMA may be classified as public, private controlled, protected, or limited. In addition, some kinds of records and other information are not governed by GRAMA. Each of these categories is discussed below, and explanatory notes have been added where needed.

1. **Preliminary matters – records and information not governed by GRAMA.** Some kinds of records and other information are not governed by GRAMA and therefore need not be provided in response to a request:

§ 103(19)(b)(i) Temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom he is working.

Interpretive note: See discussion under Part V.B.3. of this Handbook Special Classification Questions, Drafts.

§ 103(19)(b)(ii) Materials that are legally owned by an individual in his private capacity.

§ 103(19)(b)(iii) Materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision.

§ 103(19)(b)(iv) Proprietary software.

§ 103(19)(b)(v) Junk mail or commercial publications received by a governmental entity or an official or employee of a governmental entity.

§ 103(19)(b)(vi) Books and other materials that are cataloged, indexed, or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material.

§ 103(19)(b)(vii) Daily calendars and other personal notes prepared by the originator for the originator's personal use or for the personal use of an individual for whom he is working.

Interpretive note: This provision includes notes taken in daytimers. It also includes calendars used by a governmental entity employee, but will not ordinarily include, for example, an executive calendar used by several members of an office.

§ 103(19)(b)(viii) Computer programs as defined in [§103(4)] that are developed or purchased by or for any governmental entity for its own use.

§ 103(19)(b)(ix) Notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary, an administrative law judge, a member of the Board of Pardons, or a member of any other body charged by law with performing a quasi-judicial function.

2. **Public - tier 1** (Records GRAMA requires to be "public"). GRAMA specifies certain records that are public, except to the extent that they contain information expressly permitted to be treated confidential by another state or

federal statute, a federal regulation, or a court rule. (See also Part V.B.1 of this Handbook). Those records are as follows:

§ 301(1)(a) Laws.

§ 301(1)(b) Names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of the governmental entity's former and present employees and officers excluding:
(a) undercover law enforcement personnel; and
(b) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety.

Interpretive note: Performance evaluations are not "similar job qualifications," but are handled separately under §302(2)(a). See also § 103(11).

§ 301(1)(c) Final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceeds were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected.

§ 301(1)(d) Final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsection 63-2-304(16), (17), and (18).

Interpretive note: The purpose of this provision is to avoid "secret law" – law that citizens cannot know but are still expected to obey.

§ 301(1)(e) Information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Chapter 4, Title 52, Open and Public Meetings, including the records of all votes of each member of the governmental entity.

§ 301(1)(f) Judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter.

§ 301(1)(g) Records filed with or maintained by county records, clerks, treasurers, surveyors, zoning commissions, the Division of State Lands and Forestry, the School and Institutional Trust Lands Administration, the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that give public notice of:
(i) titles or encumbrances to real property.
(ii) restrictions on the use of real property;
(iii) the capacity of persons to take or convey title to real property; or
(iv) tax status for real and personal property.

§ 301(1)(h) Records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings.

§ 301(1)(i) Data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public.

Interpretative note: This provision does not apply if the record is, for example, an enforcement record protected under §304(9).

§ 301(1)(j) Documentation of the compensation that a governmental entity pays to a contractor or private provider.

Interpretive note: See also § 301(2)(b), (d), and (e). In some circumstances, a governmental entity may keep some details of a contract confidential (see § 302(2)(b), interpretive note). Under this provision, however, the amount of compensation is always public even if other parts of the contract may be kept confidential. Information about contract amount would have to be segregated from protected information in the contract.

§ 301(1)(k) Summary data.

Interpretive note: See § 103(26). This could include, for example, graphs showing dollar amounts of social service benefits received broken out by age groups of recipients.

§ 301(1)(l) Voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in Subsection 63-2-302(1)(h).

3. **Public - tier 2** (Records that are normally "public"). GRAMA also lists certain records that are normally public but to which access may be restricted to the extent that the record contains information that is private, controlled, or protected or that is exempt from disclosure by another statute, federal regulation, or court rule. See § 301(2). For a discussion of the interpretation of this section, see Part V.B.1 of this Handbook). Those records are as follows:

§ 301(2)(a) Administrative staff manuals, instruction to staff, and statements of policy.

Interpretive note: Information that would otherwise the subject to this provision may be withheld if it would reveal audit or enforcement techniques and interfere with audit or enforcement efforts, if disclosed. See § 304(9)(e). This would include, for example, information about how to find particular kinds of violations if that information could be used by a violator to prevent detection of the violations.

§ 301(2)(b) Records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity.

Interpretive note: Contracts will almost always be public. Occasionally, however, the contract may include information that is private, controlled, protected or limited. A contract with a private medical provider, for example, may include names of patients. The names would be private information and should withheld. A contract for a new building security system may include information that would, if released, jeopardized that security. That portion of the contract may be withheld as protected. See also §301(1)(j).

§ 301(2)(c) Records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity.

Interpretive note: This includes only records provided to a governmental entity, not necessarily all records of the contractor or private provider.

§ 301(2)(d) Contracts entered into by a governmental entity.

Interpretive note: See §301(1)(j) and the interpretive note for §301(2)(b).

§301(2)(e) Any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity.

Interpretive note: See § 301(1)(j) and the interpretive note for §301(2)(b).

§ 301(2)(f) Records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304(35).

§ 301(2)(g) Chronological logs and initial contact reports.

Interpretive note: See definitions under §103(2) and (13). See also discussion under Part V.B.1 of this Handbook, Special Classification Questions, Public records - tier 2.

§ 301(2)(h) Correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person.

§ 301(2)(i) Empirical data contained in drafts if:
(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and
(ii) the governmental entity is given a reasonable opportunity to correct any error or make non-substantive changes before release.

Interpretive note: See discussion under Part V.B.3 of this Handbook, Special Classification Questions, Drafts.

§ 301(2)(j) Drafts that are circulated to anyone other than:
(i) a governmental entity;
(ii) a political subdivision;
(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;
(iv) a government-managed corporation; or
(v) a contractor or private provider.

Interpretive note: See discussion under Part V.B.3 of this Handbook, Special Classification Questions, Drafts.

§ 301(2)(k) Drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy.

Interpretive note: See discussion under Part V.B.3 of this Handbook, Special Classification Questions, Drafts.

§ 301(2)(l) Original data in a computer program if the governmental entity chooses not to disclose the program.

Interpretive note: The purpose of this provision is to assure that the status of a computer program as exempt from GRAMA (§103(19)(b)(iv) and (viii)) will not affect the availability of information maintained using that computer program. That information should instead be classified as any other government record. For example, word processing documents of final opinions are public. See §301(1)(c). Database documents containing medical information on various individual are private See §301(1)(b).

§ 301(2)(m) Arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service.

§ 301(2)(n) Search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial.

§ 301(2)(o) Records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:
(i) The disciplinary action has been completed and all time periods for administrative appeal have expired; and
(ii) the formal charges were sustained.

§ 301(2)(p) Records maintained by the Division of Sate Lands and Forestry and the Division of Oil, Gas and Mining that evidence mineral production on government lands.

§ 301(2)(q) Final audit reports.

Interpretive note: See also § 103(1).

§ 301(2)(r) Occupational and professional licenses.

§ 301(2)(s) Business licenses.

§ 301(2)(t) A notice of violation, a notice of agency action under Section 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

4. **Private – tier 1** (Records GRAMA requires to be “private”). GRAMA classifies some records as private. See § 302(1). (See also Part V.B.2 of this Handbook). Those records are as follows:

§ 302(1)(a) Records concerning an individual’s eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels.

§ 302(1)(b) Records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data.

§ 302(1)(c) Records of publicly funded libraries that when examined alone or with other records identify a patron.

§ 302(1)(d) Records received or generated in a Senate or House Ethics Committee concerning any alleged violation of the rules on legislative ethics if the ethics committee

meeting was closed to the public.

§ 302(1)(e) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:
(i) if prior to the meeting, the chair of the committee determines release of the records:
(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or
(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing;
(ii) after the meeting, if the meeting was closed to the public.

§ 302(1)(f) Records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions.

§ 302(1)(g) Records or parts of records under Section 63-2-302.5 that a current or former government employee identifies as private according to the requirements of that section.

§ 302(1)(h) The part of a record indicating a person's social security number if provided under Section 31A-23-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6.

§ 302(1)(i) The part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number.

§ 302(1)(j) A record that:
(i) contains information about an individual;
(ii) is voluntarily provided by the individual; and
(iii) goes into an electronic database that:
(A) is designated by and administered under the authority of the Chief Information Officer; and
(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency.

§ 302(1)(k) Information provided to the Commissioner of Insurance under:
(i) Subsection 31A-23a-115(2)(a); or
(ii) Subsection 31A-23a-302(3).

§ 302(1)(l) Information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.

5. **Private - tier 2** (Records GRAMA permits to be classified as "private"). Some records are private only if they are classified as private by a governmental entity. See §302(2). (See also Part V.B.2 of this Handbook). Those records are as follows:

§ 302(2)(a) Records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluation and personal status information such as race, religion, or disabilities, but not including records that are public under Subsections 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection 63-2-302(1)(b).

§ 302(2)(b) Records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63-2-301(1);
(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or
(iii) records that must be disclosed in accordance with another statute.

§ 302(2)(c) Records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency.

§ 302(2)(d) Other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy.

Interpretive note: This language is very similar to language in the federal Freedom of Information Act and in several state statutes.

§ 302(2)(e) Records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.

A 1998 amendment to GRAMA created an unusual provision in GRAMA regarding medical records. Under that amendment, medical records "in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63-2-303 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or
(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense."

Utah Code Ann. § 63-2-302(3). Furthermore, the amendment provides that medical records are subject to production in a legal or administrative proceeding according to state or federal statutes (e.g., the Health Insurance Portability & Accountability Act of 1996 ("HIPAA")) or rules of procedure and evidence "as if the medical records were in the possession of a non-governmental medical care provider."

6. Controlled. Some medical records may be classified as controlled rather than private:

§ 303 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
  (c) the governmental entity has properly classified the record.

Interpretive note: Note in particular that the two requirements of (2)(b) are conjunctive.

In *Neel v. Holden*, 886 P.2d 1097 (Utah 1994), the Utah Supreme Court held that psychological evaluations used by the Board of Pardons were properly classified as controlled records and that the inmate had only a limited right of access to the psychological reports considered by the Board.

7. **Protected.** GRAMA allows access to certain records to be restricted for the public good (or, in some circumstances, to protect the interests of others) if those records are properly classified as "protected" by a governmental entity. **Table 5-1, at the end of this Part V.A.7 is a short index to the protected classifications categories**. Records that may be classified protected are as follows:

§ 304(1) Trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63-2-308.

Interpretive note: "Trade secret" is a term with a long history of case law interpretation, including under the federal Freedom of Information Act (5 U.S.C. §552(b)(4)).

§ 304(2) Commercial information or non-individual financial information obtained from a person if:
- (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;
- (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and
- (c) the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308.

Interpretive note: This is similar to the language used by courts interpreting the federal Freedom of Information Act (5 U.S.C. §552(b)(4)).

§ 304(3) Commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy.

§ 304(4) Records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-3(3).

§ 304(5) Test questions and answers to be used in future license, certification, registration, employment, or academic examinations.

§ 304(6) Records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this subsection does not restrict the right of a person to see bids submitted to or by a governmental entity after bidding has closed.

§ 304(7) Records that would identify real property or the appraisal or estimated value of real property, including intellectual property, under consideration for public acquisition before any rights to the property are acquire unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;
(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;
(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property; or
(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property.

§ 304(8) Records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or
(b) when prepared by or on behalf of a governmental entity, appraisal or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity.

§ 304(9) Records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if the 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.

Interpretive note: See also § 304(8). Many of these provision are similar to the federal Freedom of Information Act, 5 U.S.C. § 552(b)(7)).

§ 304(10) Records the disclosure of which would jeopardize the life or safety of an individual.

§ 304(11) Records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental record-keeping systems from damage, theft, or other appropriation or use contrary to law or public policy.

Interpretive note: The public policy behind protection of a "government program" should be careful scrutinized since this term is somewhat vague. An example of a record that is deserving of protection under this provision is a list of questions that a detainee is asked to determine whether he/she is likely to jump bail. It is not a sufficient jeopardy to a program that release of the information would decrease public support for the program.

§ 304(12) Records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole.

§ 304(13) Records that, if disclosed, would reveal recommendations made to the Board of Pardons by an employee of or contractor for the Department of Corrections, the Board of Pardons, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction.

§ 304(14) Records and audit workpapers that identify audit, collection, and operational procedures and methods used by the Utah State Tax Commission, if disclosure would interfere with audits or collections.

Interpretive note: See also § 103(1).

§ 304(15) Records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released.

Interpretive note: See also § 103(1).

§ 304(16) Records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery.

§ 304(17) Records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation.

§ 304(18) Records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8.

§ 304(19) Personal files of a legislator, including personal correspondence to or from a member of the Legislature, but not correspondence that gives notice of legislative action or policy.

§ 304(20) Records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the

legislation or course of action public;

§ 304(21) Research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests.

§ 304(22) Drafts, unless otherwise classified as public.

Interpretive note: See discussion under Part V.B.3 of this Handbook, Special Classification Questions, Drafts.

§ 304(23) Records concerning a governmental entity's strategy about collective bargaining or pending litigation.

§ 304(24) Records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities.

§ 304(25) Records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest.

Interpretive note: This provision is placed in the "protected" category rather that in the "private" category because it is not appropriate for the subject of the recommendation to have access to the record as he/she may have had if he/she, and not the writer, was found to be the subject of the record.

§ 304(26) Records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information.

§ 304(27) Records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency.

§ 304(28) Records of a public institution of higher education regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Chapter 4, Title 52, Open and Public Meetings, provided that records reelecting final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section.

§ 304(29) Records of the governor's office, including, but not limited to, budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public.

§ 304(30) Records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas.

§ 304(31) Records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if they providing entity certifies that the record would not be subject to public disclosure if retained by it.

§ 304(32) Transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7 of the Open and Public Meetings Act.

§ 304(33) Records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure.

§ 304(34) Memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons, or a member of any other body charged by law with performing a quasi-judicial function.

§ 304(35) Records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract

§ 304(36) Materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets.

§ 304(37) The name of a donor or a prospective donor to a governmental entity, including a public institution of higher education, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor request anonymity in writing;
(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this subsection;
(c) except for public institutions of higher education, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of his immediate family, or any entity owned or controlled by the donor or his immediate family.

§ 304(38) Accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13.

§ 304(39) Notification of workers' compensation insurance coverage described in Section 34A-2-205.

§ 304(40) The following records of a public institution of education, which have been developed, discovered, or received by or on behalf of faculty, staff, employees, or students of the institution: unpublished lecture notes, unpublished research notes and data, unpublished manuscripts, creative works in process, scholarly correspondence, and confidential information contained in research proposal. Nothing in this subsection shall be construed to affect the ownership of a record.

TABLE 5-1: INDEX OF PROTECTED CATEGORIES	
Private Business Interests • Trade Secrets - § 304(1) • Commercial and non-individual financial information - § 304(2) • General records with potential to damage commercial project entity - § 304(4)	Government Business/Economic Interests • Information that might lead to financial speculations or interfere with planned transaction - § 304(3) • Procurement - § 304(5) • Acquisition of property - § 304(6) • Disposition of property - § 304(7) • Intellectual property rights - § 304(36) • Donors - § 304(37) • Incentives for business expansion - § 304(35)
Government Negotiation and Legal Interests • Records prepared in anticipation of litigation -§ 304(16) • Attorney work product - § 304(17) • Private communications with attorney - § 304(18) • Collective bargaining or litigation strategy - § 304(24) • Investigation & analysis of loss occurrences - § 304(24) • Settlement negotiations - § 304(33)	Government Operations • Test questions - § 304(5) • Enforcement/Audit - § 304(9) • Discipline/Licensing/Certification, etc. - § 304(9) • Procedures and methods of Tax Commission - § 304(14) • Ongoing or planned audits - § 304(15) • Drafts - § 304(22) • Certain personal recommendations regarding individuals - § 304(25) • Closed portion of meeting - § 304(32)

Safety/Security/Corrections Interests
• Safety of Individual - § 304(10)
• Security of Government property & programs - § 304(11)
• Correctional facility - § 304(12)
• Control & supervision of offenders - § 304(12)
• Recommendation to Board of Pardons - § 304(13)
• Location of historic or biological resources - § 304(26)
• Accident reports - § 304(38)
	Records of Particular Government Entities
	• Governor's Office - § 304(29)
	• Legislature
	  • Personal files of Legislators - § 304(19)
	  • Unnumbered bill requests - § 304(20)
	  • Research requests from Legislators - § 304(21)
	  • Legislative Fiscal Analyst - § 304(30)
	• Education (lecture notes, etc.) - § 304(40)
	• Higher Education (tenure, etc.) - § 304(40)
	• Independent State Agencies - § 304(27)
	• Tax Commission - § 304(14)
	• Quasi-judicial function - § 304(34)
	• Records provided by governmental entities outside the state - § 304(31)
	• Notification of workers' compensation insurance coverage - § 304(39)

8. Limited. GRAMA recognizes that other law may address access to government records and specifies that:

§ 201(3) The following records are not public:

...

(b) records 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.

GRAMA further provides that:

§ 201(6) (a) The disclosure of records to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.

(b) This chapter applies to records described in Subsection (a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

Interpretive note: Denial requirements and other procedural requirements will ordinarily apply for records subject to these provisions. Following are some examples of records that apply:

- *Under Utah Code §§ 53-3-420 and 53-3-109, a driving record may be disclosed under certain circumstances. This information may have been considered private under §302(d) in the absence of this provision.*
- *Under Utah Code § 53B-16-301, et seq., certain sponsored research information held by public institutions of higher education is exempt from disclosure and from other specified provisions of GRAMA. These records are labeled "restricted" under this statute.*
- *Under Utah Code § 19-1-306(5), records provided by the U.S. Environmental Protection Agency to the Department of Environmental Quality may be kept confidential under some circumstances.*

B. SPECIAL CLASSIFICATION QUESTIONS.

1. Public records - tier 2.

Section 301(2), or tier 2 of the section in GRAMA specifying certain records that are public, raises an interesting question of GRAMA interpretation. Since the overall access standard in GRAMA is that records are public unless specifically exempted from disclosure by law, one could wonder why a certain small number of records are specifically identified in tier 2 as just that – records that are public unless exempted by law. The tier 2 records were added by the drafters of the statute as a compromise between those who felt no listing of specific public records was necessary and those who felt that some listing of records that are usually public was important to give guidance to GRAMA

users.

The resulting provision should be recognized as a helpful, but by no means exhaustive listing of public government records. And even though a record is listed in tier 2 of Section 301, a person classifying such a record should be aware that the record might contain private, controlled, or protected information notwithstanding its listing, and therefore be deserving of a classification other than public.

2. Private records – tier 1 and tier 2.

GRAMA establishes two tiers of private records. The most personal records are listed in § 302(1) – "tier 1" – which a governmental entity simply does not have authority to disclose. See §§ 201(5) and 302(1). Tier 1 records include medical and psychiatric records, records relating to eligibility for social services, and employees' home addresses and payroll deductions.

Other private records that may, in unusual situations, be disclosed by a governmental entity are found in § 302(2) – "tier 2." These records may be released if the privacy interests are outweighed by the public's interest in disclosure, a determination that must be made at a high level within the agency. See §§ 201(5) and 302(2).

It should also be recognized that, in some circumstances, any private record may be released to the public. See § 202(9).

3. Drafts. Provisions relating to drafts are found at many places in GRAMA. The first is found at § 103(19)(b)(i):

> [As used in this chapter, "record" does not mean] temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom he is working.

Because these records are exempted from GRAMA, they need not be provided to a requester.

Another exemption from disclosure is found in § 304:

> [The following records are protected if properly classified by a governmental entity:]
>
> § 304(22) Drafts, unless otherwise classified as public.

This exemption recognizes the value of a closed deliberative process at initial stages. Deliberative process exemptions are frequently recognized in records access statutes because of the fear, in the absence of such an exemption, of chilling communications within an agency and therefore discouraging thoughtful and creative decision-making. There is no statutory definition of draft, so reliance on common usage of the word is appropriate.

Drafts are exempt from disclosure "unless otherwise classified as public." That reference is to three provisions found in § 301:

> [The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under §§ 63-2-201(3)(b), 63-2-302, 63-2-303, or 63-2-304:]
>
> § 301(2)(i) Empirical data contained in drafts if:
> (i) the empirical data is not reasonably available to the requester elsewhere in similar form; and
> (ii) the governmental entity is given a reasonable opportunity to correct any errors or make non-substantive changes before release.
>
> § 301(2)(j) Drafts that are circulated to anyone other than;
> (i) a governmental entity;
> (ii) a political subdivision;
> (iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;
> (iv) a government-managed corporation; or
> (v) a contractor or private provider.
>
> § 301(2)(k) Drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy.

The purpose of all of these provisions is to narrow the "draft" exemption (§ 304(22)) so that it only applies to legitimate deliberative process records.

- The provision regarding empirical data is included because ideas, and not factual information, are deliberative.
- The provision regarding circulation of drafts is included to assure that an agency will not provide information to some citizens while withholding it from others.
- The provision about drafts that have not been finalized was included so that a governmental entity may not avoid public disclosure of a document that it is using as though it were final simply by failing to produce a final version.

Drafts that are described in §§ 301(2)(i) through (k) need not always be classified public. If a draft is about the amount of medication that a patient has been taking, for example, that information is clearly private under §302(b) even though it is "empirical data." Private information and other information that is exempt from disclosure (under provisions other than § 304(22) do not lose that status simply because they are in a draft that is subject to § 301(2)(i) through (k). In interpreting § 301(2)(i) through (k), it may be helpful to consider the draft as though it were final in order to determine what the status of the record should be.

C. CLASSIFICATION AND DESIGNATION PROCEDURES

1. **Some records are classified by GRAMA.** The records listed in § 301(1) are classified as public by the statute. The records listed in § 302(1) are classified as private by the statute. No other action is necessary regarding the

classification of those records, however the classification should be reported to State Archives.

2. **When to classify other records.** A governmental entity may classify a particular record, record series, or information within a record at any time, but it is not required to classify a particular record, record series, or information until access to the record is requested. See § 306(2). Because GRAMA requires adherence to strict timetables once a request has been made, governmental entities would be well advised to classify in advance records for which they expect to receive requests.

WARNING! Governmental entities have a responsibility to protect the confidentiality of private, controlled, and protected records. To assist governmental entities in performing that responsibility, GRAMA provides penalties for employees who intentionally disclose such records to unauthorized persons. If a record that should be classified as private, controlled, or protected is not classified as either private, controlled, or protected, the penalties do not apply. It is therefore advisable to classify private, controlled, or protected records at the earliest possible opportunity so the penalties will apply and encourage compliance.

3. **How to classify a record.** Classification consists of no more than making a determination about a record. Classification decisions should be noted in a log or other roll that is then forwarded to Archives. Governmental entities should be aware that Archives may make additional rules that govern this process.

   In classifying records, it may be helpful to review the governmental entity's record "designations" – a list of record series and likely classifications for those series. Note that a document that may be classified private - tier 2, controlled, or protected may not always need to be so classified, but that decisions should ordinarily be made at a policy-making level within the agency.

4. **Reclassification.** A governmental entity may redesignate a record series or reclassify a record or record series, or information within a record at any time. See § 306(3).

5. **Records that fit more than one classification.** If more than one provision of GRAMA could govern the classification of a record, the governmental entity is required to classify the record by considering the nature of the interests intended to be protected and the specificity of the competing provisions. See § 305(1). For example, records that may be classified "controlled" also fit within the private classification of § 302(1)(b), as medical records. In that case, the interests outlined in § 303 are more compelling than the interests in classifying the record private. Section 303 is also a more specific provision. It is likely that where there are competing provisions, the more restrictive classification will usually govern.

6. **Designation of records.** Each governmental entity is required to evaluate all record series that it uses or creates and to designate the classification that the records in the series would be given, if classified. The governmental entity is required to report the designation to the state archives. See §§ 103(7) and 306(1). See also § 103(3) to compare designation with classification. The purposes of this procedure are to give record users some idea of what kinds and classifications of records a governmental entity has and to promote appropriate record management. Designation is not intended to be the kind of rigorous determination that classification should be.

VI. BUSINESS CONFIDENTIALITY CLAIMS

A. WHAT IS A CONFIDENTIAL BUSINESS RECORD UNDER GRAMA? Business confidential records are those that are subject to § 304(1) or (2):

(1) trade secrets are defined in Section 13-24-2 if the person submitting the trade secrets has provided the governmental entity with the information specified in Section 63-2-308;

(2) commercial information or non-individual financial information obtained from a person if:
- (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;
- (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and
- (c) the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308;

See also § 308, and the interpretive notes in Part V.A.7 of this Handbook regarding § 304(1) and (2).

B. HOW TO MAKE A CLAIM OF BUSINESS CONFIDENTIALITY. An individual providing a record to a governmental entity and wishing to claim business confidentiality must provide a written claim of business confidentiality and a concise statement of reasons supporting the claim. See § 308.

C. NOTICE TO THE BUSINESS CONFIDENTIALITY CLAIMANT. In the event that an agency classifies a record with a business confidentiality claim as a public record, or if the agency determines the record should be released pursuant to its balancing authority, the business confidentiality claimant shall be notified. See § 308(1)(b).

D. NO RELEASE OF RECORDS SUBJECT TO A BUSINESS CONFIDENTIALITY CLAIM PENDING APPEAL. Records with a claim of business confidentiality shall not be disclosed pending appeal of a decision to release the record. See § 308(2).

VII. RECORD SHARING BETWEEN OR AMONG GOVERNMENTAL ENTITIES

Private, controlled or protected records may not be disclosed to another governmental entity, political subdivision, government-managed corporation, the federal government or another state, except as provided in Section 206. See § 201(5)(a). However, certain records – private (tier 2) and protected records – may also be disclosed using the balancing authority pursuant to § 201(5)(b).

Section 206 allows in some cases, and mandates in others, the sharing of restricted documents, i.e., private, controlled or protected records.

A. WHO IS A GOVERNMENTAL ENTITY?

"Governmental entity" is defined in § 103(10). It includes executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons, the Board of Examiners, the National Guard, the Career Service Review Board, the State Board of Education, the State Board of Regents, the State Archives, the Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, legislative committees, courts, the Judicial Council, the office of the Court Administrator, state funded institutions of higher education and public education, and any political subdivision of the state. See § 103(10)(a). It also includes every office, agency, board, bureau, committee, department, advisory board, or commission of the above entities funded by the government. See § 103(10)(b).

If a government office consists of more than one of the units described above, it may, by rule, specify which units may share records. See Part IX.B.6 of this Handbook.

B. MANDATORY SHARING.

A governmental entity shall provide a private, controlled or protected record to another governmental entity or political subdivision, government-managed corporation, the federal government or another state if the requesting entity is entitled by law to the record, or is required as a condition of the receipt of state or federal funds to inspect such record. See § 206(4).

C. PERMISSIVE SHARING.

1. Determine what type of entity the requesting agency is.

A governmental entity may provide a private, controlled or protected record to another governmental entity or political subdivision, government-managed corporation, the federal government or another state if the requesting entity is of the following type:

- Serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;
- Enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;
- Is authorized by state statute to conduct an audit and the record is needed for that purpose; or
- Is one that collects information for presentence, probationary, or parole purposes.

See § 206(1).

2. Determine the reasons for which the requested record will be used.

Even if the requesting entity is not of the type named in § 206(1), a governmental entity may still share private or controlled records with another governmental entity or political subdivision, government-managed corporation, the federal government or another state if the requesting entity assures it of the following:

- The record is necessary to the performance of its duties;
- The record will be used for a purpose similar to that for which the record was collected (remember that under § 601, each governmental entity will have filed with the state archivist a statement explaining the purposes for which a record series designated private or controlled and used by the entity); and
- The use of the record produces a public benefit that outweighs any individual privacy right.

See § 206(2). A protected record that contains trade secrets or commercial information as defined in §§ 304(1) and (2) may be shared without the assurance that the use of the record produces a public benefit that outweighs any individual privacy right. See § 206(3).

3. Determine the type of record requested.

If the record is one that evidences or relates to a violation of law, it may be shared with a government prosecutor, peace officer, or auditor. See § 206(10).

D. FORBIDDEN SHARING.

Certain records may not be shared at all under § 206. Those records are:

- Records held by the Utah State Tax Commission that pertain to any person and that are gathered pursuant to Title 59, Revenue and Taxation;
- Records held by the Utah Division of Oil, Gas and Mining that pertain to any person and that are gathered under the authority of Chapter 6, Title 40, Board and Division of Oil, Gas and Mining; and
- Records of publicly funded libraries and described in Subsection 63-2-302(1)(c).

See § 206(9).

E. PREREQUISITES FOR SHARING

Even if the record is one that may be shared, or must be shared, the originating entity must inform the requesting entity of the record's classification and accompanying restrictions on access prior to disclosing the record. See § 206(5). If the requesting entity is not a governmental entity, there is the additional prerequisite that the originating entity obtain the requesting entity's written agreement that it will abide by restrictions on access. See § 206(5).

F. RESTRICTIONS ON SHARED RECORDS.

It is important to note that the same restrictions on disclosure of a record apply to the requesting entity as apply to the originating entity. See § 206(7).

G. RECORDS SHARING AND PROSECUTOR'S DUTY TO PROVIDE INFORMATION TO DEFENSE.

In *State v. Spry*, 21 P.3d 675 (Utah Ct. App. 2001), the defendant in a criminal prosecution requested an internal affairs hearing record pursuant to Rule 16(a)(1) of the Utah Rules of Criminal Procedure. The State refused on the grounds that the prosecutor, the prosecutor's staff and investigating officers did not have possession of and lacked knowledge of the evidence in the hearing record. The defendant argued that the prosecutor did have access to the record through Utah Code § 63-2-206. The Court of Appeals rejected the argument, asserting that "requiring the State to disclose to the defense all information to which it has 'access' under GRAMA 'would place a herculean burden on the prosecutor to search through the records of every state agency' looking for relevant written or recorded statements on behalf of the defendant simply because the state has access to the records under GRAMA." *Id.* at 677-78.

VIII. PENALTIES FOR VIOLATION OF GRAMA

A. CRIMINAL PENALTIES UNDER GRAMA. In order to be found guilty of a criminal penalty under GRAMA, the conduct at issue must have been both knowing and intentional. The following are class B misdemeanors under GRAMA:

- Intentionally disclosing or providing a copy of a private, controlled or protected record knowing that disclosure is prohibited (§ 801(1));
- Gaining access to a private, controlled, or protected record by false pretenses, bribery or theft (§ 801(2)); and,
- Intentionally refusing to release a record the disclosure of which the employee knows to required (§ 801 (3)).

B. DEFENSES TO CRIMINAL PENALTIES. The following are defenses available to those charged with criminal penalties for intentional disclosure under § 801(1).

1. Whistleblower defense. The actor released information in the reasonable belief that such information was necessary to expose:

- A violation of law involving government corruption;
- Abuse of office; or
- Misappropriation of public funds or property.

See § 801(1)(b).

2. Improper classification. The actor released information that could have lawfully been released had the information been properly classified. See § 801(1)(c).

C. DISCIPLINARY ACTION. A governmental entity or political subdivision may take disciplinary action, including suspension or discharge, against any employee who intentionally violates GRAMA. See § 804.

D. ATTORNEY FEES. If a requester appeals a denial to the district court and substantially prevails, the court may require the governmental entity to pay the requester's attorney fees incurred in the court appeal. The likelihood of an award of attorney fees is increased if the agency had no reasonable basis for its actions. See § 802. Attorney fees may not be awarded for administrative hearings.

E. OTHER CRIMINAL PENALTIES. If there is a law other than GRAMA that authorizes or required the keeping of a particular record, that law might also provide penalties for violation. Additionally, the Utah Code lists the following relevant offenses and penalties:

- Stealing, destroying, or mutilating public records by a custodian is a 3rd degree felony; (Utah Code § 76-8-412)
- Stealing, destroying, or mutilating a public record by a non-custodian is a

class A misdemeanor; (Utah Code § 76-8-413)

- Recording false or forged instruments is a 3rd degree felony; (Utah Code § 76-8-414)
- Falsification or false alteration of a government record is a class B misdemeanor; (Utah Code § 76-8-511) and
- Fraudulent alteration of a proposed or enrolled legislative bill is a 3rd degree felony. (Utah Code §§ 76-8-107 and -108)

IX. GOVERNMENTAL ENTITY'S RULES AND FEES

A. WHERE TO FILE REQUESTS. Section § 204(2) permits rules specifying where and to whom requests for access to records shall be directed. It is recommended that each governmental entity enact such a rule. The rule can protect the entity from having to respond within time limits set by GRAMA to requests that get lost in the system or are submitted to the wrong place.

B. DESIGNATION OF AUTHORIZED OFFICERS AND OTHER GRAMA RESPONSIBILITIES. Section 904(2) allows rules specifying what level within the agency the requirements of GRAMA will be undertaken. Examples are as follows:

1. **Weighing authority.** See § 201(5)(b) allows an agency head or his/her designee to weigh privacy interest against access interests and to allow more liberal access to certain private or protected records if the interests favoring access outweigh the interests favoring restriction of access. (That weighing authority is particularly relevant to business confidentiality claims under § 308). If someone other than the agency head is designated to exercise the weighing authority, it is recommended that the designee be at the highest possible level within the agency's structure.

2. **Authority to decide appeals.** If a requester is dissatisfied with the agency's initial decision regarding access, GRAMA allows an appeal to the agency head or the agency head's designee. If someone other than the agency head will routinely decide those appeals, a rule specifying that would seem helpful. See § 401.

3. **Authority to waive fees.** Section § 203(4) allows the agency to waive fees. A rule could specify at what level the authorization to waive fees could be given.

4. **Authority to grant research requests.** See § 202(8) allows the disclosure of private or controlled records for research purposes if certain conditions are met. A rule could specify who is authorized to grant those requests.

5. **Authority regarding intellectual property rights.** See § 201(10) allows an agency to make decisions regarding duplication and distribution of materials for which the agency owns the intellectual property rights. A rule could specify

who is authorized to make those decisions.

6. **What is a governmental entity for purposes of record sharing?** GRAMA prohibits record sharing between governmental entities in some circumstances, unless specified conditions are met, but does not regulate record sharing within a governmental entity. A rule could specify what is considered to be a "governmental entity" for record-sharing purposes.

C. **DESIGNATION OF "REQUEST FOR AMENDMENT" APPEALS AS FORMAL OR INFORMAL.** Section 603 allows an individual to contest the accuracy or completeness of records concerning him/her. The appeal is governed by the Utah Administrative Procedures Act (UAPA) which allows the government office to designate, by rule, whether the matter will be conducted formally or informally. If a government office makes no designation, UAPA provides that the matter will be conducted formally. Therefore, if an agency desires to handle such matters informally, the government office must have a rule that so specifies. (If the consequences of formal vs. informal designation are not understood, the assistant attorney general that represents the agency may be consulted).

D. **ESTABLISHMENT OF FEES.** Section § 203 allows the agency to charge a reasonable fee to cover the agency's actual cost of duplicating a record or compiling it in a form other than that maintained by the agency. If an agency intends to charge any fees, the agency must adopt a fee schedule as provided in § 203(3). "Actual costs" included the cost of staff time for: "summarizing, compiling, or tailoring the record," "search, retrieval, and other direct administrative costs," and "the costs associated with formatting or interfacing the information for particular users." See § 203(2). The State Division of Finance adopted the following policy regarding GRAMA fees in 1994:

> 1. Departments are not required to charge a fee for services rendered in connection with providing information to individuals or organizations. If a department sets a fee or rate to charge for services, the department may choose to assess or waive the fee at any time.
>
> 2. Departments are allowed (not necessarily encouraged) to charge a fee to cover the cost of duplicating a record or to cover the cost of compiling a record in a form other than that maintained by the Department. The cost for time spent in trying to locate a record may also be included in the amount charged. All fees received shall be retained by a department as dedicated credits.
>
> 3. If charged, the amount of the fee may be set to recover all "direct costs." Direct costs are generally defined as the costs that are traceable to the specific service being provided. Direct costs include the salary and benefit costs of the person locating and copying the records, the cost of copier paper, a per copy prorated cost of using the copier, etc.
>
> 4. Indirect costs (department overhead costs) may also be recovered through the fee charged. However, including department indirect costs should occur

only if filling records requests has a significant impact on the operation of the agency. Central State overhead costs may not be recovered through the fee.

5. Fees may be charged now but are subject to the provisions of Utah Code Title 63, Chapter 38a (User Fees). This legislation requires all estimates of "dedicated credits" to be included in the budget request for each fiscal year. If the estimates are not included, then all revenues collected under this policy will be deposited in the General Fund as free revenue.

6. Fees may not be charged for "reviewing a record to determine whether it is subject to disclosure or inspecting a record." This means that agencies may not charge any fees for time spent trying to locate a record when the patron wants to only examine the record.

7. If the total amount due from an individual or organization exceeds or is expected to exceed $50, a department may require an advance payment for the amount expected to be paid.

In *Graham v. Davis County Solid Waste Mgmt and Energy Recovery Special Serv. Dist.*, 979 P.2d 363 (Utah App. 1999), the requester brought a complaint alleging that a county special service district violated GRAMA by requiring the requester to pay $280 for staff time to compile the requested documents. The Court of Appeals held that such fees may be justified in light of the burden placed on public agencies in producing documents, but the individual agency bears the burden of proving that these fees are reasonable. Two factors of reasonableness are: (1) whether the request is for a document to be produced in a form not normally used by the agency; or (2) whether the request is for documents that must be extracted from a larger document source.

X. MISCELLANEOUS

A. AGENCY COLLECTION AND USE OF INFORMATION

1. **Statement of purpose of collection.** Each governmental entity is required to file a statement with the state archivist explaining the purpose for which record series designated as private or controlled are collected and used by that governmental entity. See § 601(1).

2. **Limitation on use.** A governmental entity may not use private or controlled records for purposes other than those given in that statement or for purposes other than those for which another governmental entity could use the record under § 206. See § 601(3).

B. COURT ORDERS REGARDING ACCESS

A governmental entity must disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

- The record deals with a matter in controversy over which the court has jurisdiction;
- The court has considered the merits of the request for access to the record;
- The court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under §§ 304(1) & (2), and privacy interests or the public interests in the case of other protected records;
- To the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and
- Where access is restricted by a rule, regulation, or statute other than GRAMA the court has authority independent of GRAMA to order disclosure. See § 202(7).

If a government office received a court order and is not certain whether it complies with these conditions, the office should contact the agency's legal counsel.

C. CONFIDENTIALITY AGREEMENTS. Governmental entities should be careful about entering into a confidentiality agreement. A governmental entity cannot override GRAMA and prevent disclosure merely by promising confidentiality. However, there is nothing to prevent a governmental entity from making and advance determination about a record's entitlement to confidential treatment and entering into an agreement on that basis. While a promise of confidentiality would not be binding on a court or the State Records Committee, a promise may evidence the submitter's expectation of confidentiality which, if legitimate, is a factor that those tribunals will consider in determining whether a release would constitute an unwarranted invasion of personal privacy. A governmental entity entering into a confidentiality agreement would be well advised to make it clear that any promises are subject to the requirements of GRAMA, e.g., the authority of a court or the State Records Committee to overrule the rights of a requester to challenge the governmental entity's determination.

There is a special provision that applies to records subject to agreements executed before April 1, 1992. For those records the law in effect at the time the agreement was executed governs access to the record, unless all parties to the confidentiality agreement agree in writing to be governed by GRAMA. See § 105.

D. CONFIDENTIAL TREATMENT OF RECORDS FOR WHICH NO EXEMPTION APPLIES. A court may, on appeal or in a declaratory or other action, order the confidential treatment of records for which no exemption from disclosure applies if there are compelling interests favoring restriction of access to the record; and the interests favoring restriction of access clearly outweigh the interests favoring access. See § 405.

E. OTHER REQUESTS REGARDING RECORDS.

1. **Request to create a record.** A governmental entity is not required to create a record in response to a request. See § 201(8)(a).

2. **Request to provide a different format.** Upon request, a governmental entity must provide a record in a particular format if:

    - The governmental entity is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and
    - The requester agrees to pay the governmental entity for its additional costs actually incurred in providing the record in the requested format. See § 201(8)(b). The governmental entity may require the payment of fees in advance as set forth in paragraph 3 of part III B 3 above.

3. **Request to amend record.** See Part X.F of this Handbook regarding the rights of individuals.

4. **Request to disclose purpose and use of record.** See Part X.F of this Handbook.

F. RIGHTS OF INDIVIDUALS

1. **Right to know regarding private or controlled information.** Upon request, each governmental entity is required to explain to an individual the reasons the individual is asked to furnish information that could be classified private or controlled, the intended uses of the information and the consequences for refusing to provide the information. See § 601(2).

2. **Right to contest accuracy or completeness of record.** An individual may request a governmental entity to amend any public, private, or controlled record concerning him/her. The procedure is set forth in § 603. If the request is denied the individual is permitted to file a statement contesting the information. The statement is kept with the record and must accompany any disputed information. The denial may also be appealed. The right to request amendment does not apply to certain specified records. See § 603(8).

3. **Right to privacy.** Individuals have a constitutional privacy right.

G. AGENCY RECORDS MANAGEMENT RESPONSIBILITIES

Governmental entities are required to make and maintain adequate records and to manage them in accordance with the provisions of GRAMA and of the rules issued by the Department of Administrative Services. See § 903.

H. DESTRUCTION OR OTHER DISPOSITION OF RECORDS

1. **Records are state property.** All records created or maintained by a governmental entity of the state are property of the state. See § 905(1).

2. **Adoption of retention schedules.** The chief administrative officer of each governmental entity is required to submit to archives proposed schedules for the length of time various records must be retained. See § 903(4). The State Records Committee reviews the proposed schedules and adopts retention schedules for all records. See § 502(1)(b).

3. **Restrictions on destruction or other disposition of records.** It is unlawful to mutilate, destroy, or otherwise damage or dispose of a record, in whole or in part, in contravention of the applicable retention schedule or other provisions of GRAMA. See § 905. One such provision is that a governmental entity may not destroy or give up custody of a record to which access was denied until the period for an appeal has expired or the end of the appeals process, including judicial review, unless otherwise required by a court or agency of competent jurisdiction. See § 205(3) and penalty section above.

APPENDIX A

FORMS

Note: There is no requirement that the exact forms in this appendix be used for making or responding to GRAMA requests. The forms are intended to assist the public and governmental entities in complying with GRAMA. Those who are familiar with GRAMA may prefer to use a different or more abbreviated format.

Request for a Record

Utah Government Records Access and Management Act

To: ____
(Name of person and/or government office holding records)

____
(Address of government office)

Person making request

Name: ____

Mailing Address: ____

Daytime Telephone Number: ____

I desire ___ access to or _____ copies of the following records (describe with reasonable specificity, attach additional sheet if necessary):

_______ see additional sheet(s) attached.

This request is submitted under the authority of Section 63-2-101 et. seq., Utah Code, (GRAMA).

If applicable, check one of the following and attach necessary documentation.

_____ I am the subject of the record.

_____ I am the person who provided the information.

_____ I am authorized to have access by the subject of the record or by the person who submitted the information.

_____ I believe this request should be handled as an expedited (five day) request under Section 63-2-204(3), because, for the reasons outlined in the attached explanation, expedited response to this request benefits the public rather than the person making the request. (if applicable, describe the reasons the public will benefit from early response to this request and attach that summary to this request. Without this provision the request will be handled as soon as reasonably possible, but can take up to ten business days to be granted)

_____ Other. Explain ____

I agree to pay a reasonable fee to cover the actual cost of duplicating a record if copies are requested, not to exceed $_________, in conformance with the government entity's policy as determined by ordinance or written formal policy adopted by the governing body. I understand that there is no charge for inspecting a record. I further understand that the agency will contact me if estimated costs are greater than the amount I have specified and that the agency will not respond to a request for copies if I have not authorized adequate costs.

Date: _________________________ ___________________________________
Person making request

TO THE GOVERNMENT ENTITY WHERE A RECORD IS REQUESTED:

This form is meant to comply with the minimum statutory requirements for access to government records. The details of these statutory requirements are found in Title 63, Chapter 2 of the Utah Code. The provisions of the Government Records Access and Management Act are lengthy and complicated. This summary is meant to provide some highlights. The law has many complexities, and this outline merely highlights the issues -- it cannot include all the details in the statute.

Intent: GRAMA is intended, among other goals, to promote the public's right of easy and reasonable access to unrestricted public records and to favor public access when, in the application of the law, countervailing interests are of equal weight. 63-2-102)

Access: Every person is entitled to review and obtain copies of any public document. 63-2-201(1)

Time: A request for record access or copies shall be responded to as soon as reasonably possible -- no later than 10 business days, or 5 business days if a request benefits the public rather than the requesting individual. 63-2-204(3)(a)

Charges: Records can be inspected free of charge. 63-2-201(1). A reasonable charge can be assessed for copies if that charge is adopted by official policy. 63-2-203(1). The actual cost to compile a record in a form other than that normally maintained may be charged. 63-2-203(2). No charge can be assessed for the time taken to review a record to determine if it is public or for inspecting the record. 63-2-203(5). No charge is to be made if the record directly relates to a persons legal rights and that person cannot afford to pay the fee. 63-2-203(4).

Public documents - Every document is public unless private, controlled or protected. 63-2-201(2)

Private documents - Generally relate to individuals and their private interests, such as eligibility for benefits, medical history, employment, library circulation, etc. 63-2-302.

Controlled documents - mainly medical records of individuals shared to a limited audience. 63-2-303

Protected documents - Generally trade secrets, financial and commercial information for companies, test questions, appraisals for future property transactions, investigations, litigation documents not available through discovery, privileged communications from the agency''s attorney, drafts, minutes and notes of closed meetings, and other documents that may compromise a legitimate state or private interest. 63-2-304

Business Confidentiality: If a record provided by a business to an agency is desired to be protected, the business must provide a claim of confidentiality and state the reasons for the restricted access. The agency can still classify the record as public if it notifies the business. 63-2-308

Not a record: temporary drafts, privately owned documents; calendars and notes; etc. 63-2-103(19)

Denial: If access is denied, the agency shall provide a notice of denial, including a description of the record or portion of record to which access is denied, citation to the statute allowing the denial, and a description of the process to appeal the denial. 63-2-205(2)

Destruction: If access to a record is denied, that record is not to be destroyed or given to another agency before the appeal period has passed. 63-2-205(3)

Other agencies: Non-public records can be provided to another government agency if that agency enforces, litigates or investigates civil, criminal or administrative law and in other instances. 63-2-206(1).

Appeals: Within 30 days of a denial of access or other determination. File a notice of appeal to the chief administrative officer of the agency. 63-2-401. A review of the appeal can be requested of the state records committee or the district court. (63-2-402).

Penalties: It is a class B misdemeanor to knowingly disclose records that should not be disclosed, or to gain access to records that should not be disclosed by false pretenses, bribery, or theft, or to intentionally refuse to release a record which is legally required to be released. 63-2-801

Attorneys Fees: Can be ordered against the agency if a person who appeals a denial of access substantially prevails in legal action. 63-2-802

Adapted from a form prepared by the Utah State Private Property Ombudsman, Craig Call. For more information about private property disputes, go to http://www.utahpropertyrights.com, call (801) 537-3455 or e-mail to nradm.ccall@state.ut.us.

****

FOR AGENCY USE ONLY

Date request received: _________ Initial time limit for response: ❍ 5 days ❍ 10 days

Classification: Private _________ Controlled_______

Protected_______ Public __________

Access is governed by a law other than GRAMA _________

Requested document is not a "record" under GRAMA _____

Is access authorized? (Complete this section if records are private, controlled, or protected.)

Private: ____ Requester is the subject of the record.

____ Requester is other person authorized by UCA 63-202(1) and has supplied required documentation.

____ Requester is a not authorized to have access.

Controlled: ____ Requester is a physician, psychologist, or certified social worker, insurance provider or agent, or a government public health agency has supplied a notarized release dated no more than 90 days prior to this request, and has signed an acknowledgment re nondisclosure. UCA 63-2-202(2).

_____ Requester is not entitled to access.

Protected: ____ Requester is person who submitted record.

____ Requester is other person authorized by UCA 63-2-202(4) and has supplied required documentation.

____ Requester is a not entitled to access.

How was identification verified? ______________________ ______________________

Response to request: (See U.C.A. 63-2-204)

_____ Approved, requester notified on _______________, 20___.

_____ Denied - Written denial sent on _______________, 20___.

_____ Requester notified agency does not maintain record, and, if known, was also notified of name and address of agency that does maintain record on _____________, 20___.

_____ Extension of time claimed for extraordinary circumstances
Required notice sent _______________, 20___. See U.C.A. 63-2-204(3)(iv).

Copy fees:

Amount _______ or, if waived, waiver approved by ___________________

____
(signature)

NOTICE OF EXTENDED TIME FOR
RESPONSE TO RECORDS REQUEST

Please take notice that due to extraordinary circumstances we cannot immediately approve or deny the request for records that you filed on ___________________, 20_____. The reason additional time is needed and the date by which we are required to respond are as follows:

_____ The record is being used by _______________________________ (which is another governmental entity). On _____________, 20___, we requested that they return it to us. They are required to return it to us within 5 business days of that date unless returning the record would impair their work.

_____ The record is being used as part of an audit by _________________________ (which is another governmental entity). Returning the records before completion of the audit would impair the conduct of the audit. We shall notify you when the record is available, which we expect to be on or before _____________, 20___.

_____ Your request is so voluminous that we cannot respond in the normal time. We will complete the work as soon as reasonably possible and expect to be able to respond on or before _____________, 20___.*

_____ We are currently processing a large number of requests. We will respond to your request as soon as reasonably possible and expect to be able to respond on or before _____________, 20___.*

_____ Your request requires us to review a large number of records. We will respond to your request as soon as reasonably possible and expect to be able to respond on or before _____________, 20___.*

_____ The decision involves legal issues that require us to seek legal counsel for analysis. We will respond on or before _____________, 20___, which is 5 business days after the original time limit for response.

_____ The segregation of information that you are entitled to inspect from information that you are not entitled to inspect requires extensive editing. The editing will be completed on or before _____________, 20___, which is 15 business days from the date of the original request.

If you believe the extraordinary circumstances do not exist or that the time specified is unreasonable, you may appeal to the following administrative officer:

Name: ____
Title: ____
Address: ____
____

To do so you must file a notice of appeal with that officer within 30 days of the date of this notice. The notice of appeal must contain you name, mailing address, daytime telephone number, and an explanation of what you want the appeals officer to do. You may include a short statement of facts, reasons, and legal authority in support of your appeal.

Date: _________________ Signed: __________________________________

Title: ____________________________________

*Records, or a list of records, that have been located are attached.

NOTICE
IDENTIFICATION REQUIRED

The following records that you recently requested are classified as ________ private ________ controlled ________ protected under the Government Records Access and Management Act (GRAMA):
____
____
____

Access to those records is limited to the persons mentioned in Section 202 of GRAMA. (a copy of that section is on the reverse.) Before we release the record we are required by GRAMA to obtain evidence of the requester's identity. See Section 202(6). Please either come into our office and present identification or complete the affidavit below and return it to us. (Please be sure to have it notarized.) The fee for the copies you have requested is ________. If you return the affidavit, please enclose the fee.

Records Officer: ________________________________
Address: ________________________________
____

****

AFFIDAVIT

I have read the above statement and understand that access to the records I have requested is restricted and that there are criminal penalties for obtaining a government record by false pretenses. I am entitled to have copies of the record because:

_____ I am the subject of the record.
_____ I am the person who provided the information.
_____ I am authorized to have access by the subject of the record or by the person who submitted the information and I have attached the necessary documentation required by § 202.
_____ Other (explain) ____
____

Please send a copy of the records described above to me at the following address:

Name: ________________________________
Address: ________________________________
____
Daytime telephone #: ________________________________

____
(signature)

STATE OF _______________)
):ss
COUNTY OF _____________)

Subscribed and sworn to before me this ______ day of __________________, 20_____, by ______________________, known by me to the person named in the above affidavit.

Notary Public: ____________________________
Residing at: ____________________________
My Commission expires: ____________________________

CONSENT FOR THE RELEASE OF INFORMATION TO A THIRD PARTY

I. ____
(name of individual authorizing release)

authorize ____
(name of agency holding record)

to release the following information ____
____
(Title of series, file group, or description of information)

to whom ____

for the purpose of ____

____

I understand that these records are restricted under state privacy laws and cannot be disclosed without my written consent. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it. A notarized release shall not be dated more than 90 days before the request is made

Executed this ____________ day of _______________________, 20_____.

____
(signature of individual authorizing release,
or parent, guardian, or legal representative)

____
(notary public, State of Utah)

____
(my commission expires (expiration date))

NOTICE OF DENIAL
OF
REQUEST FOR RECORDS

TO: ____________________________________
____
____

In response to your recent request for records, you are hereby notified that access to the following described record(s) or portions of the record(s) is denied: ________________
____
____

The reasons that access to that information is denied is:

_____ the information is "private" pursuant to the Utah Code Ann. 63-2-302 and you have not shown that you are a person entitled to access pursuant to Utah Code Ann. 63-2-202(1). See reverse.

_____ the information is "controlled" pursuant to the Utah Code Ann. 63-2-303 and you have not shown that you are a person entitled to access pursuant to Utah Code Ann. 63-2-202(2). See reverse.

_____ the information is "protected" pursuant to the Utah Code Ann. 63-2-304__ and you have not shown that you are a person entitled to access pursuant to Utah Code Ann. 63-2-202(4). See reverse.

_____ the information is exempt from disclosure pursuant to the following cited statute, federal regulation, or court rule or order:_____________________
____

_____ (other explanation) ____
____

You have the right to appeal the denial to the following administrative officer:

Name: ____
Title: ____
Address: ____
____

To do so, you must file a Notice of Appeal with that officer within 30 days of the date of this denial. Your Notice of Appeal must contain your name, your mailing address, your daytime telephone number, and a statement of the relief you seek. (You may use the form on the reverse side of this denial.) With your Notice of Appeal, you may also file a short statement of facts, reasons, and legal authority in support of what you want the officer to do.

CERTIFICATE OF DELIVERY

I certify that on the date listed below I

_____ gave the requester a copy of this Notice of Denial

_____ mailed the requester a copy of this Notice of Denial at the address listed above.

Date: ___________________ Signed by: ___________________________

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

(1) Upon request, a governmental entity shall disclose a private record to:
(a) the subject of the record;
(b) the parent or legal guardian of an unemancipated minor who is the subject of the record;
(c) the legal guardian of a legally incapacitated individual who is the subject of the record;
(d) any other individual who:
(i) has a power of attorney from the subject of the record;
(ii) submits a notarized release from the subject of the record or his legal representative dated no more than 90 days before the date the request is made; or
(iii) if the record is a medical record described in Subsection 63-2-302(1)(a)(ii), is a health care provider, as defined in Section 26-33a-102, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or
(e) any person to whom the record must be provided pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.
(2) (a) Upon request, a governmental entity shall disclose a controlled record to:
(i) a physician, psychologist, certified social worker, insurance provider or agent, or a government public health agency upon submission of a release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and
(ii) any person to whom the record must be disclosed pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.
(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.
(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.
(4) Upon request, a governmental entity shall disclose a protected record to:
(a) the person who submitted the record;
(b) any other individual who:
(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or
(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;
(c) any person to whom the record must be provided pursuant to a court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14; or
(d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).
(5) A governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, another state, the United States, or a foreign government only as provided by Section 63-2-206.
(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.
(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:
(a) the record deals with a matter in controversy over which the court has jurisdiction;
(b) the court has considered the merits of the request for access to the record; and
(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records;
(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and
(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.
(8) (a) A governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:
(i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;
(ii) determines that the proposed research is bona fide, and that the value of the research outweighs the infringement upon personal privacy;
(iii) requires the researcher to assure the integrity, confidentiality, and security of the records and requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;
(iv) prohibits the researcher from disclosing the record in individually identifiable form, except as provided in Subsection (8)(b), or from using the record for purposes other than the research approved by the governmental entity; and
(v) secures from the researcher a written statement of his understanding of and agreement to the conditions of this subsection and his understanding that violation of the terms of this subsection may subject him to criminal prosecution under Section 63-2-801.
(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.
(c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).
(9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6) a governmental entity may disclose records that are private under Section 63-2-302, or protected under Section 63-2-304 to persons other than those specified in this section.
(b) Under Subsection 63-2-403(11)(b) the Records Committee may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.
(c) Under Subsection 63-2-404(8) the court may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

NOTICE OF APPEAL

Please take notice that I hereby appeal the denial of my Request for Records. The Notice of Denial that the agency sent to me is dated __________________ and was signed by ___________________________. The relief that I seek is as follows: (Explain what you want the appeals officer to do) ____
____
____
____
____

My name is: ______________________________________
My mailing address is: ______________________________
(include zip code) ______________________________
My daytime telephone number is:______________________

Dated: _____________________ Signed: ___________________________________

APPENDIX B

Government Records Access and Management Act

UTAH CODE, TITLE 63, CHAPTER 2
GOVERNMENT RECORDS ACCESS AND MANAGEMENT

Part 1
General Provisions.

63-2-101. Short title.
63-2-102. Legislative intent.
63-2-103. Definitions.
63-2-104. Administrative Procedures Act not applicable.
63-2-105. Confidentiality agreements.
63-2-106. Records of security measures.
63-2-107. Disclosure of records subject to federal law.

Part 2
Access to Records.

63-2-201. Right to inspect records and receive copies of records
63-2-202. Access to private, controlled, and protected documents.
63-2-203. Fees.
63-2-204. Requests - Time limit for response and extraordinary circumstances.
63-2-205. Denials.
63-2-206. Sharing records.
63-2-207. Subpoenas - Court ordered disclosure for discovery.

Part 3
Classification.

63-2-301. Records that must be disclosed.
63-2-302. Private records.
63-2-302.5. Private information concerning certain government employees
63-2-303. Controlled records.
63-2-304. Protected records.
63-2-305. Procedure to determine classification.
63-2-306. Duty to evaluate records and make designations and classifications.
63-2-307. Segregation of records.
63-2-308. Business confidentiality claims.

Part 4
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PART 1

GENERAL PROVISIONS

63-2-101. Short title.

This chapter is known as the "Government Records Access and Management Act."
63-2-102. Legislative intent.

(1) In enacting this act, the Legislature recognizes two constitutional rights:

(a) the public's right of access to information concerning the conduct of the public's business; and

(b) the right of privacy in relation to personal data gathered by governmental entities.

(2) The Legislature also recognizes a public policy interest in allowing a government to restrict access to certain records, as specified in this chapter, for the public good.

(3) It is the intent of the Legislature to:

(a) promote the public's right of easy and reasonable access to unrestricted public records;

(b) specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access;

(c) prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided in this chapter;

(d) provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and which are consistent with nationwide standards of information practices;

(e) favor public access when, in the application of this act, countervailing interests are of equal weight; and

(f) establish fair and reasonable records management practices.

63-2-103. Definitions.

As used in this chapter:

(1) "Audit" means:

(a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or

(b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.

(2) "Chronological logs" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show the time and general nature of police, fire, and paramedic calls made to the agency and any arrests or jail bookings made by the agency.

(3) "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Subsection 63-2-201(3)(b).

(4) (a) "Computer program" means a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program.

(b) "Computer program" does not mean:

(i) the original data, including numbers, text, voice, graphics, and images;

(ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or

(iii) the mathematical or statistical formulas (excluding the underlying mathematical algorithms contained in the program) that would be used if the manipulated forms of the original data were to be produced manually.

(5) (a) "Contractor" means:

(i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or

(ii) any private, nonprofit organization that receives funds from a governmental entity.

(b) "Contractor" does not mean a private provider.

(6) "Controlled record" means a record containing data on individuals that is controlled as provided by Section 63-2-303.

(7) "Designation," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.

(8) "Explosive" means a chemical compound, device, or mixture:

(a) commonly used or intended for the purpose of producing an explosion; and

(b) that contains oxidizing or combustive units or other ingredients in proportions, quantities, or packing so that:

(i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases; and

(ii) the resultant gaseous pressures are capable of:

(A) producing destructive effects on contiguous objects; or

(B) causing death or serious bodily injury.

(9) "Government audit agency" means any governmental entity that conducts audits.

(10) (a) "Governmental entity" means:

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Board, the State Board of Education, the State Board of Regents, and the State Archives;

(ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iv) any state-funded institution of higher education or public education; or

(v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

(b) "Governmental entity" also means every office, agency, board, bureau, committee, department, advisory board, or commission of the entities listed in Subsection (10)(a) that is funded or established by the government to carry out the public's business.

(11) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the

individual's employer.

(12) "Individual" means a human being.

(13) (a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:

(i) the date, time, location, and nature of the complaint, the incident, or offense;

(ii) names of victims;

(iii) the nature or general scope of the agency's initial actions taken in response to the incident;

(iv) the general nature of any injuries or estimate of damages sustained in the incident;

(v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or

(vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.

(b) Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (13)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection 63-2-201(3)(b).

(14) "Person" means any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization.

(15) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.

(16) "Private record" means a record containing data on individuals that is private as provided by Section 63-2-302.

(17) "Protected record" means a record that is classified protected as provided by Section 63-2-304.

(18) "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63-2-201(3)(b).

(19) (a) "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data, or other documentary materials regardless of physical form or characteristics:

(i) which are prepared, owned, received, or retained by a governmental entity or political subdivision; and

(ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

(b) "Record" does not mean:

(i) temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom he is working;

(ii) materials that are legally owned by an individual in his private capacity;

(iii) materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;

(iv) proprietary software;

(v) junk mail or commercial publications received by a governmental entity or an official or employee of a governmental entity;

(vi) books and other materials that are cataloged, indexed, or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material;

(vii) daily calendars and other personal notes prepared by the originator for the originator's personal

use or for the personal use of an individual for whom he is working;

(viii) computer programs as defined in Subsection (4) that are developed or purchased by or for any governmental entity for its own use; or

(ix) notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary, an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function.

(20) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

(21) "Records committee" means the State Records Committee created in Section 63-2-501.

(22) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

(23) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.

(24) "State archives" means the Division of Archives and Records Service created in Section 63-2-901.

(25) "State archivist" means the director of the state archives.

(26) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

63-2-104. Administrative Procedures Act not applicable.

Title 63, Chapter 46b, Administrative Procedures Act, does not apply to this chapter except as provided in Section 63-2-603.

63-2-105. Confidentiality agreements.

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

63-2-106. 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.

63-2-107. Disclosure of records subject to federal law.

Notwithstanding the provisions of Subsections 63-2-201(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.

PART 2

ACCESS TO RECORDS

63-2-201. 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 63-2-203 and 63-2-204.

(2) All records are public unless otherwise expressly provided by statute.

(3) The following records are not public:

(a) records that are private, controlled, or protected under Sections 63-2-302, 63-2-302.5, 63-2-303, and 63-2-304; and

(b) records 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 those records specified in Section 63-2-302, 63-2-302.5, 63-2-303, or 63-2-304 may be classified private, controlled, or protected.

(5) (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Section 63-2-202, 63-2-206, or 63-2-302.5.

(b) A governmental entity may disclose records that are private under Subsection 63-2-302(2) or protected under Section 63-2-304 to persons other than those specified in Section 63-2-202 or 63-2-206 if the head of a governmental entity, or a designee, determines that there is no interest in restricting access to the record, or that the interests favoring access outweighs the interest favoring restriction of access.

(6) (a) The disclosure of records to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.

(b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

(7) A governmental entity shall provide a person with a certified copy of a record if:

(a) the person requesting the record has a right to inspect it;

(b) the person identifies the record with reasonable specificity; and

(c) the person pays the lawful fees.

(8) (a) A governmental entity is not required to create a record in response to a request.

(b) Upon request, a governmental entity shall provide a record in a particular format if:

(i) the governmental entity is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and

(ii) the requester agrees to pay the governmental entity for its costs incurred in providing the record in the requested format in accordance with Section 63-2-203.

(c) Nothing in this section requires a governmental entity to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

(9) If a person requests copies of more than 50 pages of records from a governmental entity, and, if the records are contained in files that do not contain records that are exempt from disclosure, the governmental entity may:

(a) provide the requester with the facilities for copying the requested records and require that the requester make the copies himself; or

(b) allow the requester to provide his own copying facilities and personnel to make the copies at the governmental entity's offices and waive the fees for copying the records.

(10) (a) A governmental entity that owns an intellectual property right and that offers the intellectual

property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to be in the public interest.

(b) Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the intellectual property right.

(11) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of persons to inspect and receive copies of a record under this chapter.

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

(1) Upon request, a governmental entity shall disclose a private record to:

(a) the subject of the record;

(b) the parent or legal guardian of an unemancipated minor who is the subject of the record;

(c) the legal guardian of a legally incapacitated individual who is the subject of the record;

(d) any other individual who:

(i) has a power of attorney from the subject of the record;

(ii) submits a notarized release from the subject of the record or his legal representative dated no more than 90 days before the date the request is made; or

(iii) if the record is a medical record described in Subsection 63-2-302(1)(b), is a health care provider, as defined in Section 26-33a-102, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

(e) any person to whom the record must be provided pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

(2) (a) Upon request, a governmental entity shall disclose a controlled record to:

(i) a physician, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of a release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

(ii) any person to whom the record must be disclosed pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, a governmental entity shall disclose a protected record to:

(a) the person who submitted the record;

(b) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;

(c) any person to whom the record must be provided pursuant to a court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14; or

(d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).

(5) A governmental entity may disclose a private, controlled, or protected record to another

governmental entity, political subdivision, another state, the United States, or a foreign government only as provided by Section 63-2-206.

(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

(a) the record deals with a matter in controversy over which the court has jurisdiction;

(b) the court has considered the merits of the request for access to the record; and

(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records;

(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) A governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

(i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;

(ii) determines that the proposed research is bona fide, and that the value of the research outweighs the infringement upon personal privacy;

(iii) requires the researcher to assure the integrity, confidentiality, and security of the records and requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from disclosing the record in individually identifiable form, except as provided in Subsection (8)(b), or from using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of his understanding of and agreement to the conditions of this Subsection (8) and his understanding that violation of the terms of this Subsection (8) may subject him to criminal prosecution under Section 63-2-801.

(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

(c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).

(9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6), a governmental entity may disclose records that are private under Section 63-2-302, or protected under Section 63-2-304 to persons other than those specified in this section.

(b) Under Subsection 63-2-403(11)(b), the Records Committee may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

(c) Under Subsection 63-2-404(8), the court may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

63-2-203. Fees.

(1) A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of duplicating a record. This fee shall be approved by the governmental entity's executive officer.

(2) 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:

(a) the cost of staff time for summarizing, compiling, or tailoring the record either into an organization or media to meet the person's request;

(b) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request. The hourly charge may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request; provided, however, that no charge may be made for the first quarter hour of staff time; and

(c) 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) and (b).

(3) Fees shall be established as follows:

(a) Governmental entities with fees established by the Legislature shall establish the fees defined in Subsection (2), or other actual costs associated with this section through the budget process. Governmental entities with fees established by the Legislature may use the procedures of Section 63-38-3.2 to set fees until the Legislature establishes fees through the budget process. A fee set by a governmental entity in accordance with Section 63-38-3.2 expires on May 1, 1995.

(b) Political subdivisions shall establish fees by ordinance or written formal policy adopted by the governing body.

(c) The judiciary shall establish fees by rules of the judicial council.

(4) A governmental entity may fulfill a record request without charge and is encouraged to do so when it determines that:

(a) releasing the record primarily benefits the public rather than a person;

(b) the individual requesting the record is the subject of the record, or an individual specified in Subsection 63-2-202(1) or (2); or

(c) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

(5) A governmental entity may not charge a fee for:

(a) reviewing a record to determine whether it is subject to disclosure, except as permitted by Subsection (2)(b); or

(b) inspecting a record.

(6) (a) A person who believes that there has been an unreasonable denial of a fee waiver under Subsection (4) may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under Section 63-2-205.

(b) The adjudicative body hearing the appeal has the same authority when a fee waiver or reduction is denied as it has when the inspection of a public record is denied.

(7) (a) All fees received under this section by a governmental entity subject to Subsection (3)(a) shall be retained by the governmental entity as a dedicated credit.

(b) Those funds shall be used to recover the actual cost and expenses incurred by the governmental entity in providing the requested record or record series.

(8) A governmental entity may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50, or if the requester has not paid fees from previous requests. Any prepaid amount in excess of fees due shall be returned to the requester.

(9) This section does not alter, repeal, or reduce fees established by other statutes or legislative acts.

(10) (a) Notwithstanding Subsection (3)(b), fees for voter registration records shall be set as provided in this Subsection (10).

(b) The lieutenant governor shall:

(i) after consultation with county clerks, establish uniform fees for voter registration and voter history records that meet the requirements of this section; and

(ii) obtain legislative approval of those fees by following the procedures and requirements of Section 63-38-3.2.

63-2-204. 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 his name, mailing address, daytime telephone number, if available, and a description of the records requested that identifies the record with reasonable specificity.

(2) A governmental entity may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.

(3) (a) As soon as reasonably possible, but no later than ten 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, the governmental entity shall respond to the request by:

(i) approving the request and providing the record;

(ii) denying the request;

(iii) notifying the requester that it does not maintain the record and providing, if known, the name and address of the governmental entity that does maintain the record; or

(iv) notifying the requester that because of one of the extraordinary circumstances listed in Subsection (4), it cannot immediately approve or deny the request. The notice shall describe the circumstances relied upon and specify the date when the records will be available.

(b) Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.

(4) The following circumstances constitute "extraordinary circumstances" that allow a governmental entity to delay approval or denial by an additional period of time as specified in Subsection 63-2-204(5) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (3):

(a) another governmental entity is using the record, in which case the originating governmental entity shall promptly request that the governmental entity currently in possession return the record;

(b) another governmental entity is using the record as part of an audit, and returning the record before the completion of the audit would impair the conduct of the audit;

(c) the request is for a voluminous quantity of records;

(d) the governmental entity is currently processing a large number of records requests;

(e) the request requires the governmental entity to review a large number of records to locate the records requested;

(f) the decision to release a record involves legal issues that require the governmental entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;

(g) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or

(h) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.

(5) If one of the extraordinary circumstances listed in Subsection (4) precludes approval or denial within the time specified in Subsection (3), the following time limits apply to the extraordinary circumstances:

(a) for claims under Subsection (4)(a), the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work;

(b) for claims under Subsection (4)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;

(c) for claims under Subsections (4)(c), (d), and (e), the governmental entity shall:

(i) disclose the records that it has located which the requester is entitled to inspect;

(ii) provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request; and

(iii) complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible;

(d) for claims under Subsection (4)(f), the governmental entity shall either approve or deny the request within five business days after the response time specified for the original request has expired;

(e) for claims under Subsection (4)(g), the governmental entity shall fulfill the request within 15 business days from the date of the original request; or

(f) for claims under Subsection (4)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.

(6) (a) If a request for access is submitted to an office of a governmental entity other than that specified by rule in accordance with Subsection (2), the office shall promptly forward the request to the appropriate office.

(b) If the request is forwarded promptly, the time limit for response begins when the record is received by the office specified by rule.

(7) 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 records.

63-2-205. Denials.

(1) If the governmental entity denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.

(2) The notice of denial shall contain the following information:

(a) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63-2-201(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 63-2-201(3)(b);

(c) a statement that the requester has the right to appeal the denial to the chief administrative officer of the governmental entity; and

(d) the time limits for filing an appeal, and the name and business address of the chief administrative officer of the governmental entity.

(3) Unless otherwise required by a court or agency of competent jurisdiction, a governmental entity may not destroy or give up custody of any record to which access was denied until the period for an

appeal has expired or the end of the appeals process, including judicial appeal.
63-2-206. Sharing records.

(1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:

(a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;

(b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;

(c) is authorized by state statute to conduct an audit and the record is needed for that purpose; or

(d) is one that collects information for presentence, probationary, or parole purposes.

(2) A governmental entity may provide a private or controlled record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:

(a) that the record or record series is necessary to the performance of the governmental entity's duties and functions;

(b) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and

(c) that the use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series.

(3) A governmental entity may provide a record or record series that is protected under Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if:

(a) the record is necessary to the performance of the requesting entity's duties and functions; or

(b) the record will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained.

(4) (a) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:

(i) is entitled by law to inspect the record;

(ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or

(iii) is an entity described in Subsection (1)(a), (b), (c), or (d).

(b) Subsection (4)(a)(iii) applies only if the record is a record described in Subsection 63-2-304(4).

(5) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, or a foreign government, the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

(6) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1), (2), and (3) without complying with the procedures of Subsection (2) or (5) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

(7) (a) Subject to Subsection (7)(b), a governmental entity receiving a record under this section is subject to the same restrictions on disclosure of the record as the originating entity.

(b) The classification of a record already held by a governmental entity and the applicable restrictions on disclosure of that record are not affected by the governmental entity's receipt under this section of a record with a different classification that contains information that is also included in the previously held record.

(8) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.

(9) The following records may not be shared under this section:

(a) records held by the Division of Oil, Gas and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas and Mining; and

(b) records of publicly funded libraries as described in Subsection 63-2-302(1)(c).

(10) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

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

(1) Subpoenas and other methods of discovery under the state or federal statutes or rules of civil, criminal, administrative, or legislative procedure are not written requests under Section 63-2-204.

(2) (a) (i) Except as otherwise provided in Subsection (2)(c), in judicial or administrative proceedings in which an individual is requesting discovery of records classified private, controlled, or protected under this chapter, or otherwise restricted from access by other statutes, the court, or an administrative law judge shall follow the procedure in Subsection 63-2-202(7) before ordering disclosure.

(ii) Until the court or an administrative law judge orders disclosure, these records are privileged from discovery.

(b) If, the court or administrative order requires disclosure, the terms of the order may limit the requester's further use and disclosure of the record in accordance with Subsection 63-2-202(7), in order to protect the privacy interests recognized in this chapter.

(c) Unless a court or administrative law judge imposes limitations in a restrictive order, this section does not limit the right to obtain:

(i) records through the procedures set forth in this chapter; or

(ii) medical records discoverable under state or federal court rules as authorized by Subsection 63-2-302(3).

PART 3

CLASSIFICATION

63-2-301. Records that must be disclosed.

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

(a) laws;

(b) names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of the governmental entity's former and present employees and officers excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63-2-304(16), (17), and (18);

(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings, including the records of all votes of each member of the governmental entity;

(f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;

(g) unless otherwise classified as private under Section 63-2-302.5, records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; or

(iv) tax status for real and personal property;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

(i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider;

(k) summary data; and

(l) voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in Subsection 63-2-302(1)(h).

(2) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63-2-201(3)(b), Section 63-2-302, 63-2-303, or 63-2-304:

(a) administrative staff manuals, instructions to staff, and statements of policy;

(b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

(c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;

(d) contracts entered into by a governmental entity;

(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304(35);

(g) chronological logs and initial contact reports;

(h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(i) empirical data contained in drafts if:

(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

(j) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

(k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;

(l) original data in a computer program if the governmental entity chooses not to disclose the program;

(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

(p) records maintained by the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that evidence mineral production on government lands;

(q) final audit reports;

(r) occupational and professional licenses;

(s) business licenses; and

(t) a notice of violation, a notice of agency action under Section 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

(3) The list of public records in this section is not exhaustive and should not be used to limit access

to records.

63-2-302. Private records.

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received or generated for a Senate or House Ethics Committee concerning any alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if the ethics committee meeting was closed to the public;

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

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

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

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(f) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions;

(g) records or parts of records under Section 63-2-302.5 that a current or former employee identifies as private according to the requirements of that section;

(h) that part of a record indicating a person's Social Security number or federal employer identification number if provided under Section 31A-23a-104, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;

(i) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number;

(j) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(k) information provided to the Commissioner of Insurance under Subsection 31A-23a-115(2)(a); and

(l) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection(1)(b);

(b) records describing an individual's finances, except that the following are public:
(i) records described in Subsection 63-2-301(1);
(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or
(iii) records that must be disclosed in accordance with another statute;
(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;
(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy; and
(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.
(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.
(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63-2-303 when the records are sought:
(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or
(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.
(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

63-2-302.5. Private information concerning certain government employees.

(1) As used in this section:
(a) "At-risk government employee" means a current or former:
(i) peace officer as specified in Section 53-13-102;
(ii) supreme court justice;
(iii) judge of an appellate, district, or juvenile court;
(iv) justice court judge;
(v) judge authorized by Title 39, Chapter 6, Utah Code of Military Justice;
(vi) federal judge;
(vii) federal magistrate judge;
(viii) judge authorized by Armed Forces, Title 10, United States Code;
(ix) United States Attorney;
(x) Assistant United States Attorney;
(xi) a prosecutor appointed pursuant to Armed Forces, Title 10, United States Code;
(xii) a law enforcement official as defined in Section 53-5-711; or
(xiii) a prosecutor authorized by Title 39, Chapter 6, Utah Code of Military Justice.
(b) "Family member" means the spouse, child, sibling, parent, or grandparent of an at-risk government employee who is living with the employee.
(2) (a) Pursuant to Subsection 63-2-302(1)(g), an at-risk government employee may file a written application that:
(i) gives notice of the employee's status to each agency of a government entity holding a record or a part of a record that would disclose the employee's or the employee's family member's home address,

home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions; and

(ii) requests that the government agency classify those records or parts of records private.

(b) An at-risk government employee desiring to file an application under this section may request assistance from the government agency to identify the individual records containing the private information specified in Subsection (2)(a)(i).

(c) Each government agency shall develop a form that:

(i) requires the at-risk government employee to provide evidence of qualifying employment;

(ii) requires the at-risk government employee to designate each specific record or part of a record containing the employee's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions that the applicant desires to be classified as private; and

(iii) affirmatively requests that the government entity holding those records classify them as private.

(3) A county recorder, county treasurer, county auditor, or a county tax assessor may fully satisfy the requirements of this section by:

(a) providing a method for the assessment roll and index and the tax roll and index that will block public access to the home address, home telephone number, situs address, and Social Security number; and

(b) providing the at-risk government employee requesting the classification with a disclaimer informing the employee that the employee may not receive official announcements affecting the employee's property, including notices about proposed annexations, incorporations, or zoning modifications.

(4) A government agency holding records of an at-risk government employee classified as private under this section may release the record or part of the record if:

(a) the employee or former employee gives written consent;

(b) a court orders release of the records; or

(c) the government agency receives a certified death certificate for the employee or former employee.

(5) (a) If the government agency holding the private record receives a subpoena for the records, the government agency shall attempt to notify the at-risk government employee or former employee by mailing a copy of the subpoena to the employee's last-known mailing address together with a request that the employee either:

(i) authorize release of the record; or

(ii) within ten days of the date that the copy and request are mailed, deliver to the government agency holding the private record a copy of a motion to quash filed with the court who issued the subpoena.

(b) The government agency shall comply with the subpoena if the government agency has:

(i) received permission from the at-risk government employee or former employee to comply with the subpoena;

(ii) has not received a copy of a motion to quash within ten days of the date that the copy of the subpoena was mailed; or

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

63-2-303. 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.

63-2-304. Protected records.

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

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63-2-308;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this Subsection (6) does not restrict the right of a person to see bids submitted to or by a governmental entity after bidding has closed;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property; or

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the

governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) 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;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8;

(19) personal files of a legislator, including personal correspondence to or from a member of the Legislature, provided that correspondence that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of

Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of a public institution of higher education regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the

governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including a public institution of higher education, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for public institutions of higher education, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of his immediate family, or any entity owned or controlled by the donor or his immediate family;

(38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of a public institution of education, which have been developed, discovered, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished research notes and data;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals; and

(b) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information contained in the database described in Section 62A-3-311.1;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services; and

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission.

63-2-305. Procedure to determine classification.

(1) If more than one provision of this chapter could govern the classification of a record, the governmental entity shall classify the record by considering the nature of the interests intended to be protected and the specificity of the competing provisions.

(2) Nothing in Subsection 63-2-302(2), Section 63-2-303, or 63-2-304 requires a governmental entity to classify a record as private, controlled, or protected.

63-2-306. 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
(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.

63-2-307. Segregation of records.

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

(1) shall allow access to information in the record that the requester is entitled to inspect under this chapter; and

(2) may deny access to information in the record if the information is exempt from disclosure to the requester, issuing a notice of denial as provided in Section 63-2-205.

63-2-308. Business confidentiality claims.

(1) (a) Any person who provides to a governmental entity a record that he believes should be protected under Subsection 63-2-304(1) or (2) shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.

(b) The claimant shall be notified by the governmental entity if a record claimed to be protected under Subsection 63-2-304(1) or (2) is classified public or if the governmental entity determines that the record should be released after balancing interests under Subsection 63-2-201(5)(b) or Subsection 63-2-401(6).

(2) Except as provided by court order, the governmental entity may not disclose records claimed to be protected under Subsection 63-2-304(1) or (2) but which it determines should be classified public until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal. This subsection does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the records committee.

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

PART 4

APPEALS

63-2-401. Appeal to head of governmental entity.

(1) (a) Any person aggrieved by a governmental entity's access determination under this chapter, including a person not a party to the governmental entity's proceeding, may appeal the determination within 30 days to the chief administrative officer of the governmental entity by filing a notice of appeal.

(b) If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63-2-204(3), and, if the requester believes the extraordinary circumstances do not exist or that the time specified is unreasonable, the requester may appeal the governmental entity's claim of extraordinary circumstances or date for compliance within 30 days after notification of a claim of extraordinary circumstances by the governmental entity, despite the lack of a "determination" or its equivalent under Subsection 63-2-204(7).

(2) The notice of appeal shall contain the following information:

(a) the petitioner's name, mailing address, and daytime telephone number; and

(b) the relief sought.

(3) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) (a) If the appeal involves a record that is the subject of a business confidentiality claim under Section 63-2-308, the chief administrative officer shall:

(i) send notice of the requester's appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible; and

(ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester within three business days after receiving notice of the requester's appeal.

(b) The claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality.

(5) (a) The chief administrative officer shall make a determination on the appeal within the following period of time:

(i) within five business days after the chief administrative officer's receipt of the notice of appeal; or

(ii) within twelve business days after the governmental entity sends the requester's notice of appeal to a person who submitted a claim of business confidentiality.

(b) If the chief administrative officer fails to make a determination within the time specified in Subsection (5)(a), the failure shall be considered the equivalent of an order denying the appeal.

(c) The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.

(6) The chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Section 63-2-302(2) or protected under Section 63-2-304 if the interests favoring access outweigh the interests favoring restriction of access.

(7) The governmental entity shall send written notice of the determination of the chief administrative officer to all participants. If the chief administrative officer affirms the denial in whole or in part, the denial shall include a statement that the requester has the right to appeal the denial to either the records committee or district court, the time limits for filing an appeal, and the name and business address of the executive secretary of the records committee.

(8) A person aggrieved by a governmental entity's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the determination on the appeal shall be made within 30 days after receiving the notice of appeal.

(9) The duties of the chief administrative officer under this section may be delegated.

63-2-402. Option for appealing a denial.

(1) If the chief administrative officer of a governmental entity denies a records request under Section 63-2-401, the requester may:

(a) appeal the denial to the records committee as provided in Section 63-2-403; or

(b) petition for judicial review in district court as provided in Section 63-2-404.

(2) Any person aggrieved by a determination of the chief administrative officer of a governmental entity under this chapter, including persons who did not participate in the governmental entity's proceeding, may appeal the determination to the records committee as provided in Section 63-2-403.

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

(1) A petitioner, including an aggrieved person who did not participate in the appeal to the governmental entity's chief administrative officer, may appeal to the records committee by filing a notice of appeal with the executive secretary no later than:

(a) 30 days after the chief administrative officer of the governmental entity has granted or denied the records request in whole or in part, including a denial under Subsection 63-2-204(7);

(b) 45 days after the original request for records if:

(i) the circumstances described in Subsection 63-2-401(1)(b) occur; and

(ii) the chief administrative officer failed to make a determination under Section 63-2-401.

(2) The notice of appeal shall contain the following information:

(a) the petitioner's name, mailing address, and daytime telephone number;

(b) a copy of any denial of the records request; and

(c) the relief sought.

(3) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) (a) Except as provided in Subsection (4)(b), no later than three business days after receiving a notice of appeal, the executive secretary of the records committee shall:

(i) schedule a hearing for the records committee to discuss the appeal at the next regularly scheduled committee meeting falling at least 14 days after the date the notice of appeal is filed but no longer than 45 days after the date the notice of appeal was filed provided, however, the records committee may schedule an expedited hearing upon application of the petitioner and good cause shown;

(ii) send a copy of the notice of hearing to the petitioner; and

(iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:

(A) each member of the records committee;

(B) the records officer and the chief administrative officer of the governmental entity from which the appeal originated;

(C) any person who made a business confidentiality claim under Section 63-2-308 for a record that is the subject of the appeal; and

(D) all persons who participated in the proceedings before the governmental entity's chief administrative officer.

(b) (i) The executive secretary of the records committee may decline to schedule a hearing if the record series that is the subject of the appeal has been found by the committee in a previous hearing involving the same government entity to be appropriately classified as private, controlled, or protected.

(ii) (A) If the executive secretary of the records committee declines to schedule a hearing, the executive secretary of the records committee shall send a notice to the petitioner indicating that the request for hearing has been denied and the reason for the denial.

(B) The committee shall make rules to implement this section as provided by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(5) (a) A written statement of facts, reasons, and legal authority in support of the governmental entity's position must be submitted to the executive secretary of the records committee not later than five business days before the hearing.

(b) The governmental entity shall send a copy of the written statement to the petitioner by first class mail, postage prepaid. The executive secretary shall forward a copy of the written statement to each member of the records committee.

(6) No later than ten business days after the notice of appeal is sent by the executive secretary, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the records committee. Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention. The person seeking intervention shall provide copies of the statement to all parties to the proceedings before the records committee.

(7) The records committee shall hold a hearing within the period of time described in Subsection (4).

(8) At the hearing, the records committee shall allow the parties to testify, present evidence, and comment on the issues. The records committee may allow other interested persons to comment on the issues.

(9) (a) The records committee may review the disputed records. However, if the committee is weighing the various interests under Subsection (11), the committee must review the disputed records. The review shall be in camera.

(b) Members of the records committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by this chapter.

(10) (a) Discovery is prohibited, but the records committee may issue subpoenas or other orders to compel production of necessary evidence.

(b) When the subject of a records committee subpoena disobeys or fails to comply with the subpoena, the records committee may file a motion for an order to compel obedience to the subpoena with the district court.

(c) The records committee's review shall be de novo.

(11) (a) No later than three business days after the hearing, the records committee shall issue a signed order either granting the petition in whole or in part or upholding the determination of the governmental entity in whole or in part.

(b) The records committee may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access outweighs the interest favoring restriction of access.

(c) In making a determination under Subsection (11)(b), the records committee shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records.

(12) The order of the records committee shall include:

(a) a statement of reasons for the decision, including citations to this chapter, court rule or order, another state statute, federal statute, or federal regulation that governs disclosure of the record, provided that the citations do not disclose private, controlled, or protected information;

(b) a description of the record or portions of the record to which access was ordered or denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63-2-201(3)(b);

(c) a statement that any party to the proceeding before the records committee may appeal the records committee's decision to district court; and

(d) a brief summary of the appeals process, the time limits for filing an appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.

(13) If the records committee fails to issue a decision within 35 days of the filing of the notice of appeal, that failure shall be considered the equivalent of an order denying the appeal. The petitioner shall notify the records committee in writing if he considers the appeal denied.

(14) (a) Each government entity shall comply with the order of the records committee and, if records are ordered to be produced, file:

(i) a notice of compliance with the records committee upon production of the records; or

(ii) a notice of intent to appeal.

(b) (i) If the government entity fails to file a notice of compliance or a notice of intent to appeal, the records committee may do either or both of the following:

(A) impose a civil penalty of up to $500 for each day of continuing noncompliance; or

(B) send written notice of the entity's noncompliance to the governor for executive branch entities, to the Legislative Management Committee for legislative branch entities, and to the Judicial Council for judicial branch agencies entities.

(ii) In imposing a civil penalty, the records committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional.

63-2-404. Judicial review.

(1) (a) Any party to a proceeding before the records committee may petition for judicial review by the district court of the records committee's order.

(b) The petition shall be filed no later than 30 days after the date of the records committee's order.

(c) The records committee is a necessary party to the petition for judicial review.

(d) The executive secretary of the records committee shall be served with notice of the petition in accordance with the Utah Rules of Civil Procedure.

(2) (a) A requester may petition for judicial review by the district court of a governmental entity's determination as specified in Subsection 63-2-402 (1)(b).

(b) The requester shall file a petition no later than:

(i) 30 days after the governmental entity has responded to the records request by either providing the requested records or denying the request in whole or in part;

(ii) 35 days after the original request if the governmental entity failed to respond to the request; or

(iii) 45 days after the original request for records if:

(A) the circumstances described in Subsection 63-2-401(1)(b) occur; and

(B) the chief administrative officer failed to make a determination under Section 63-2-401.

(3) The petition for judicial review shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain:

(a) the petitioner's name and mailing address;

(b) a copy of the records committee order from which the appeal is taken, if the petitioner brought

a prior appeal to the records committee;

(c) the name and mailing address of the governmental entity that issued the initial determination with a copy of that determination;

(d) a request for relief specifying the type and extent of relief requested; and

(e) a statement of the reasons why the petitioner is entitled to relief.

(4) If the appeal is based on the denial of access to a protected record, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.

(5) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(6) The district court may review the disputed records. The review shall be in camera.

(7) The court shall:

(a) make its decision de novo, but allow introduction of evidence presented to the records committee;

(b) determine all questions of fact and law without a jury; and

(c) decide the issue at the earliest practical opportunity.

(8) (a) The court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the interest favoring access outweighs the interest favoring restriction of access.

(b) The court shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records.

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

(1) A court may, on appeal or in a declaratory or other action, order the confidential treatment of records for which no exemption from disclosure applies if:

(a) there are compelling interests favoring restriction of access to the record; and

(b) the interests favoring restriction of access clearly outweigh the interests favoring access.

(2) If a governmental entity requests a court to restrict access to a record under this section, the court shall require the governmental entity to pay the reasonable attorneys' fees incurred by the lead party in opposing the governmental entity's request, if:

(a) the court finds that no statutory or constitutional exemption from disclosure could reasonably apply to the record in question; and

(b) the court denies confidential treatment under this section.

(3) This section does not apply to records that are specifically required to be public under statutory provisions outside of this chapter or under Section 63-2-301, except as provided in Subsection (4).

(4) (a) Access to drafts and empirical data in drafts may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interests that relate to the underlying information, and not to the deliberative nature of the record.

(b) Access to original data in a computer program may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interests that relate to the underlying information, and not to the status of that data as part of a computer program.

PART 5

STATE RECORDS COMMITTEE

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

(1) There is created the State Records Committee within the Department of Administrative Services to consist of the following seven individuals:

(a) an individual in the private sector whose profession requires him to create or manage records that if created by a governmental entity would be private or controlled;

(b) the state auditor or the auditor's designee;

(c) the director of the Division of State History or the director's designee;

(d) the governor or the governor's designee;

(e) one citizen member;

(f) one elected official representing political subdivisions; and

(g) one individual representing the news media.

(2) The members specified in Subsections (1)(a), (e), (f), and (g) shall be appointed by the governor with the consent of the Senate.

(3) (a) Except as required by Subsection (3)(b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(c) Each appointed member is eligible for reappointment for one additional term.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

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

(1) The records committee shall:

(a) meet at least once every three months;

(b) review and approve retention and disposal of records;

(c) hear appeals from determinations of access as provided by Section 63-2-403; and

(d) appoint a chairman from among its members.

(2) The records committee may:

(a) make rules to govern its own proceedings as provided by Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(b) by order, after notice and hearing, reassign classification and designation for any record series by a governmental entity if the governmental entity's classification or designation is inconsistent with this chapter.

(3) The records committee shall annually appoint an executive secretary to the records committee. The executive secretary may not serve as a voting member of the committee.

(4) Five members of the records committee are a quorum for the transaction of business.

(5) The state archives shall provide staff and support services for the records committee.

(6) Unless otherwise reimbursed, the citizen member, the individual in the private sector, and the representative of the news media shall receive a per diem as established by the Division of Finance in Section 63A-3-106.

(7) If the records committee reassigns the classification or designation of a record or record series under Subsection (2)(b), any affected governmental entity or any other interested person may appeal the reclassification or redesignation to the district court. The district court shall hear the matter de novo.

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

PART 6

ACCURACY OF RECORDS

63-2-601. Rights of individuals on whom data is maintained.

(1) (a) Each governmental entity shall file with the state archivist a statement explaining the purposes for which record series designated private or controlled are collected and used by that governmental entity.

(b) That statement is a public record.

(2) Upon request, each governmental entity shall explain to an individual:

(a) the reasons the individual is asked to furnish to the governmental entity information that could be classified private or controlled;

(b) the intended uses of the information; and

(c) the consequences for refusing to provide the information.

(3) A governmental entity may not use private or controlled records for purposes other than those given in the statement filed with the state archivist under Subsection (1) or for purposes other than those for which another governmental entity could use the record under Section 63-2-206.

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

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

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

(1) Proceedings of state agencies under this section shall be governed by Title 63, Chapter 46b, Administrative Procedures Act.

(2) (a) Subject to Subsection (8), an individual may contest the accuracy or completeness of any public, or private, or protected record concerning him by requesting the governmental entity to amend the record. However, this section does not affect the right of access to private or protected records.

(b) The request shall contain the following information:

(i) the requester's name, mailing address, and daytime telephone number; and

(ii) a brief statement explaining why the governmental entity should amend the record.

(3) The governmental entity shall issue an order either approving or denying the request to amend as provided in Title 63, Chapter 46b, Administrative Procedures Act, or, if the act does not apply, no later than 30 days after receipt of the request.

(4) If the governmental entity approves the request, it shall correct all of its records that contain the same incorrect information as soon as practical. A governmental entity may not disclose the record until it has amended it.

(5) If the governmental entity denies the request, it shall:

(a) inform the requester in writing; and

(b) provide a brief statement giving its reasons for denying the request.

(6) (a) If a governmental entity denies a request to amend a record, the requester may submit a written statement contesting the information in the record.

(b) The governmental entity shall:

(i) file the requester's statement with the disputed record if the record is in a form such that the statement can accompany the record or make the statement accessible if the record is not in a form such that the statement can accompany the record; and

(ii) disclose the requester's statement along with the information in the record whenever the governmental entity discloses the disputed information.

(7) The requester may appeal the denial of the request to amend a record pursuant to the Administrative Procedures Act or, if that act does not apply, to district court.

(8) This section does not apply to records relating to title to real or personal property, medical records, judicial case files, or any other records that the governmental entity determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

PART 7

APPLICABILITY TO POLITICAL SUBDIVISIONS, THE JUDICIARY, AND THE LEGISLATURE

63-2-701. Political subdivisions may adopt ordinances in compliance with chapter.

(1) (a) Each political subdivision may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention, and amendment of records.

(b) The ordinance or policy shall comply with the criteria set forth in this section.

(c) If any political subdivision does not adopt and maintain an ordinance or policy, then that political subdivision is subject to this chapter.

(d) Notwithstanding the adoption of an ordinance or policy, each political subdivision is subject to Parts 1 and 3, and Sections 63-2-201, 63-2-202, 63-2-205, 63-2-206, 63-2-601, 63-2-602, 63-2-905, and 63-2-907.

(e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed with the state archives no later than 30 days after its effective date.

(f) The political subdivision shall also report to the state archives all retention schedules, and all designations and classifications applied to record series maintained by the political subdivision.

(g) The report required by Subsection (f) is notification to state archives of the political subdivision's retention schedules, designations, and classifications. The report is not subject to approval by state archives. If state archives determines that a different retention schedule is needed for state purposes, state archives shall notify the political subdivision of the state's retention schedule for the records and shall maintain the records if requested to do so under Subsection 63-2-905(2).

(2) Each ordinance or policy relating to information practices shall:

(a) provide standards for the classification and designation of the records of the political subdivision as public, private, controlled, or protected in accordance with Part 3 of this chapter;

(b) require the classification of the records of the political subdivision in accordance with those standards;

(c) provide guidelines for establishment of fees in accordance with Section 63-2-203; and

(d) provide standards for the management and retention of the records of the political subdivision comparable to Section 63-2-903.

(3) (a) Each ordinance or policy shall establish access criteria, procedures, and response times for requests to inspect, obtain, or amend records of the political subdivision, and time limits for appeals consistent with this chapter.

(b) In establishing response times for access requests and time limits for appeals, the political subdivision may establish reasonable time frames different than those set out in Section 63-2-204 and Part 4 of this chapter if it determines that the resources of the political subdivision are insufficient to meet the requirements of those sections.

(4) (a) The political subdivision shall establish an appeals process for persons aggrieved by classification, designation or access decisions.

(b) The policy or ordinance shall provide for:

(i) an appeals board composed of the governing body of the political subdivision; or

(ii) a separate appeals board composed of members of the governing body and the public, appointed by the governing body.

(5) If the requester concurs, the political subdivision may also provide for an additional level of administrative review to the records committee in accordance with Section 63-2-403.

(6) Appeals of the decisions of the appeals boards established by political subdivisions shall be by

petition for judicial review to the district court. The contents of the petition for review and the conduct of the proceeding shall be in accordance with Sections 63-2-402 and 63-2-404.

(7) Any political subdivision that adopts an ordinance or policy under Subsection (1) shall forward to state archives a copy and summary description of the ordinance or policy.

63-2-702. Applicability to judiciary.

(1) The judiciary is subject to the provisions of this chapter except as provided in this section.

(2) (a) The judiciary is not subject to Part 4 of this chapter except as provided in Subsection (5).

(b) The judiciary is not subject to Part 5 of this chapter.

(c) The judiciary is subject to only the following sections in Part 9 of this chapter: Sections 63-2-905 and 63-2-906.

(3) The Judicial Council, the Administrative Office of the Courts, the courts, and other administrative units in the judicial branch shall designate and classify their records in accordance with Sections 63-2-301 through 63-2-304.

(4) Substantially consistent with the provisions of this chapter, the Judicial Council shall:

(a) make rules governing requests for access, fees, classification, designation, segregation, management, denials and appeals of requests for access and retention, and amendment of judicial records;

(b) establish an appellate board to handle appeals from denials of requests for access and provide that a requester who is denied access by the appellate board may file a lawsuit in district court; and

(c) provide standards for the management and retention of judicial records substantially consistent with Section 63-2-903.

(5) Rules governing appeals from denials of requests for access shall substantially comply with the time limits provided in Section 63-2-204 and Part 4 of this chapter.

(6) Upon request, the state archivist shall:

(a) assist with and advise concerning the establishment of a records management program in the judicial branch; and

(b) as required by the judiciary, provide program services similar to those available to the executive and legislative branches of government as provided in this chapter.

63-2-703. Applicability to the Legislature.

(1) The Legislature and its staff offices shall designate and classify records in accordance with Sections 63-2-301 through 63-2-304 as public, private, controlled, or protected.

(2) (a) The Legislature and its staff offices are not subject to Section 63-2-203 or to Part 4 or 5 of this chapter.

(b) The Legislature is subject to only the following sections in Part 9 of this chapter: Sections 63-2-902, 63-2-906, and 63-2-909.

(3) The Legislature, through the Legislative Management Committee, shall establish policies to handle requests for records and fees and may establish an appellate board to hear appeals from denials of access.

(4) Policies shall include reasonable times for responding to access requests consistent with the provisions of Part 2 of this chapter, fees, and reasonable time limits for appeals.

(5) Upon request, the state archivist shall:

(a) assist with and advise concerning the establishment of a records management program in the Legislature; and

(b) as required by the Legislature, provide program services similar to those available to the executive branch of government, as provided in this chapter.

PART 8

REMEDIES

63-2-801. Criminal penalties.

(1) (a) A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses or provides a copy of a private, controlled, or protected record to any person knowing that such disclosure is prohibited, is guilty of a class B misdemeanor.

(b) It is a defense to prosecution under Subsection (1)(a) that the actor released private, controlled, or protected information in the reasonable belief that the disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.

(c) It is a defense to prosecution under Subsection (1)(a) that the record could have lawfully been released to the recipient if it had been properly classified.

(2) (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any private, controlled, or protected record to which he is not legally entitled is guilty of a class B misdemeanor.

(b) No person shall be guilty under Subsection (2)(a) who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

(3) A public employee who intentionally refuses to release a record the disclosure of which the employee knows is required by law or by final unappealed order from a governmental entity, the records committee, or a court, is guilty of a class B misdemeanor.

63-2-802. Injunction - Attorneys' fees.

(1) A district court in this state may enjoin any governmental entity or political subdivision that violates or proposes to violate the provisions of this chapter.

(2) (a) A district court may assess against any governmental entity or political subdivision reasonable attorneys' fees and other litigation costs reasonably incurred in connection with a judicial appeal of a denial of a records request if the requester substantially prevails.

(b) In determining whether to award attorneys' fees under this section, the court shall consider:

(i) the public benefit derived from the case;

(ii) the nature of the requester's interest in the records; and

(iii) whether the governmental entity's or political subdivision's actions had a reasonable basis.

(c) Attorneys' fees shall not ordinarily be awarded if the purpose of the litigation is primarily to benefit the requester's financial or commercial interest.

(3) Neither attorneys' fees nor costs shall be awarded for fees or costs incurred during administrative proceedings.

(4) Notwithstanding Subsection (2), a court may only award fees and costs incurred in connection with appeals to district courts under Subsection 63-2-404(2) if the fees and costs were incurred 20 or more days after the requester provided to the governmental entity or political subdivision a statement of position that adequately explains the basis for the requester's position.

(5) Claims for attorneys' fees as provided in this section or for damages are subject to Title 63, Chapter 30, Governmental Immunity Act.

63-2-803. No liability for certain decisions of a governmental entity or a political subdivision.

(1) Neither the governmental entity or political subdivision, nor any officer or employee of the governmental entity or political subdivision, is liable for damages resulting from the release of a record where the person or government requesting the record presented evidence of authority to obtain the record even if it is subsequently determined that the requester had no authority.

(2) Neither the governmental entity or political subdivision, nor any officer or employee of the governmental entity or political subdivision, is liable for damages arising from the negligent disclosure of records classified as private under Subsection 63-2-302(1)(f) unless:

(a) the disclosure was of employment records maintained by the governmental entity; or

(b) the current or former government employee had previously filed the notice required by Section 63-2-302.5 and:

(i) the government entity did not take reasonable steps to preclude access or distribution of the record; or

(ii) the release of the record was otherwise willfully or grossly negligent.

(3) A mailing from a government agency to an individual who has filed an application under Section 63-2-302.5 is not a wrongful disclosure under this chapter.

63-2-804. Disciplinary action.

A governmental entity or political subdivision may take disciplinary action which may include suspension or discharge against any employee of the governmental entity or political subdivision who intentionally violates any provision of this chapter.

PART 9

ARCHIVES AND RECORDS SERVICE

63-2-901. Division of Archives and Records Service created - Duties.

(1) There is created the Division of Archives and Records Service within the Department of Administrative Services.

(2) The state archives shall:

(a) administer the state's archives and records management programs, including storage of records, central microphotography programs, and quality control;

(b) apply fair, efficient, and economical management methods to the collection, creation, use, maintenance, retention, preservation, disclosure, and disposal of records and documents;

(c) establish standards, procedures, and techniques for the effective management and physical care of records;

(d) conduct surveys of office operations and recommend improvements in current records management practices, including the use of space, equipment, automation, and supplies used in creating, maintaining, storing, and servicing records;

(e) establish standards for the preparation of schedules providing for the retention of records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, historical, legal, or fiscal value to warrant further retention;

(f) establish, maintain, and operate centralized microphotography lab facilities and quality control for the state;

(g) provide staff and support services to the records committee;

(h) develop training programs to assist records officers and other interested officers and employees of governmental entities to administer this chapter;

(i) provide access to public records deposited in the archives;

(j) provide assistance to any governmental entity in administering this chapter; and

(k) prepare forms for use by all governmental entities for a person requesting access to a record.

(3) The state archives may:

(a) establish a report and directives management program; and

(b) establish a forms management program.

(4) The executive director of the Department of Administrative Services may direct the state archives to administer other functions or services consistent with this chapter.

63-2-902. State archivist - Duties.

(1) With the approval of the governor, the executive director of the Department of Administrative Services shall appoint the state archivist to serve as director of the state archives. The state archivist shall be qualified by archival training, education, and experience.

(2) The state archivist is charged with custody of the following:

(a) the enrolled copy of the Utah constitution;

(b) the acts and resolutions passed by the Legislature;

(c) all records kept or deposited with the state archivist as provided by law;

(d) the journals of the Legislature and all bills, resolutions, memorials, petitions, and claims introduced in the Senate or the House of Representatives;

(e) Indian war records; and

(f) oaths of office of all state officials.

(3) (a) The state archivist is the official custodian of all noncurrent records of permanent or historic

value that are not required by law to remain in the custody of the originating governmental entity.

(b) Upon the termination of any governmental entity, its records shall be transferred to the state archives.

63-2-903. Duties of governmental entities.

The chief administrative officer of each governmental entity shall:

(1) establish and maintain an active, continuing program for the economical and efficient management of the governmental entity's records as provided by this chapter;

(2) appoint one or more records officers who will be trained to work with the state archives in the care, maintenance, scheduling, disposal, classification, designation, access, and preservation of records;

(3) make and maintain adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the governmental entity designed to furnish information to protect the legal and financial rights of persons directly affected by the entity's activities;

(4) submit to the state archivist proposed schedules of records for final approval by the records committee;

(5) cooperate with the state archivist in conducting surveys made by the state archivist;

(6) comply with rules issued by the Department of Administrative Services as provided by Section 63-2-904;

(7) report to the state archives the designation of record series that it maintains;

(8) report to the state archives the classification of each record series that is classified; and

(9) establish and report to the state archives retention schedules for objects that the governmental entity determines are not records under Subsection 63-2-103(18), but that have historical or evidentiary value.

63-2-904. Rulemaking authority.

(1) The executive director of the Department of Administrative Services, with the recommendation of the state archivist, may make rules as provided by Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement provisions of this chapter dealing with procedures for the collection, storage, designation, classification, access, and management of records.

(2) A governmental entity that includes divisions, boards, departments, committees, commissions, or other subparts that fall within the definition of a governmental entity under this chapter, may, by rule, specify at which level the requirements specified in this chapter shall be undertaken.

63-2-905. Records declared property of the state - Disposition.

(1) All records created or maintained by a governmental entity 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.

(2) (a) Except as provided in Subsection (b), 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 in part, except as provided in this chapter.

(b) Records which constitute a valuable intellectual property shall be the property of the political subdivision.

(c) The state archives may, upon request from a political subdivision, take custody of any record

series of the political subdivision. A political subdivision which no longer wishes to maintain custody of a record which must be retained under the political subdivision's retention schedule or the state archive's retention schedule shall transfer it to the state archives for safekeeping and management.

(3) It is unlawful for a governmental entity or political subdivision to intentionally mutilate, destroy, or otherwise damage or dispose of a record series knowing that such mutilation, destruction, or damage is in contravention of the political subdivision's or the state archive's properly adopted retention schedule.

63-2-906. Certified and microphotographed copies.

(1) Upon demand, the state archives shall furnish certified copies of a record in its exclusive custody that is classified public or that is otherwise determined to be public under this chapter by the originating governmental entity, the records committee, or a court of law. When certified by the state archivist under the seal of the state archives, the copy has the same legal force and effect as if certified by the originating governmental entity.

(2) The state archives may microphotograph records when it determines that microphotography is an efficient and economical way to care, maintain, and preserve the record. A transcript, exemplification, or certified copy of a microphotograph has the same legal force and effect as the original. Upon review and approval of the microphotographed film by the state archivist, the source documents may be destroyed.

(3) The state archives may allow another governmental entity to microphotograph records in accordance with standards set by the state archives.

63-2-907. Right to replevin.

To secure the safety and preservation of records, the state archivist or his representative may examine all records. On behalf of the state archivist, the attorney general may replevin any records that are not adequately safeguarded.

63-2-908. Inspection and summary of record series.

The state archives shall provide for public inspection of the title and a summary description of each record series.

63-2-909. Records made public after 75 years.

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

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

PART 10

PUBLIC ASSOCIATIONS

63-2-1001. Definitions - Public associations subject to act.

(1) As used in this section:

(a) "Public association" means any association, organization, or society whose members include elected or appointed public officials and for which public funds are used or paid to the public association for membership dues or for other support for the official's participation in the public association.

(b) (i) "Public funds" means any monies received by a public entity from appropriations, taxes, fees, interest, or other returns on investment.

(ii) "Public funds" does not include monies donated to a public entity by a person or entity.

(2) The budget documents and financial statements of a public association shall be released pursuant to a written request if 50% or more of the public association's:

(a) members are elected or appointed public officials from this state; and

(b) membership dues or other financial support come from public funds from this state.

APPENDIX C

State Records Committee Decision Index

State Records Committee Decision Index

Prepared by State Archives.
Full text of opinions can be obtained by calling (801) 538-3848
or going to http://archives.utah.gov/appeals/indxtabl.htm

Decision Number	Participants	Ruling	Summary	Decision Appealed
92-01	Salt Lake Tribune vs. Dept. of Transportation	Partially granted	The Tribune requested access to a traffic accident computer database. The Department denied the request. The Committee determined that the series was a public records however it does contain some private information. The appeal was granted in part. The database is to be released with the private information redacted.	Yes
92-02	Desert News vs. Public Safety: Driver License	Denied	The Desert News requested to be allowed to inspect, without charge, the driving records of 50 political candidates. The Department was willing to allow the inspection but was not willing to waive the fee. While GRAMA does specify that "every person has the right to inspect a public record free of charge, it also states that the disclosure of records to which access is governed pursuant to another state statute is governed by the provisions of that statute. The Committee determined that this series is governed by the Utah Operator's License Act (UCA 41-2-102). While the statute authorizes the Department to charge a fee, it does not require them to do so. While the appeal was denied since the Committee did not believe they had the authority to mandate a fee waiver, the Committee encouraged the Department to waive the fee.	

93-01	Randy Nielsen vs. Natural Resources	Granted	Mr. Nielsen requested a list of the names and addresses of all person who bought hunting or fishing licenses in certain zip codes. The Department denied the request based on the private classification assigned by the Department. The Committee determined that the release of the requested information would not constitute a clearly unwarranted invasion of personal privacy. The Committee reclassified the information as public and ordered the release of the records.	
93-02	John Pace vs. Corrections	Granted	Mr. Pace requested records relating to the monitoring of inmates telephone calls. The Department's position was that the request duplicated a prior request and therefore did not respond to the request. The sole issue in this appeal is whether a request for records filed by Mr. Pace unreasonably duplicates a prior request thus justifying the Department's refusal to respond to the request. The Committee determined that based on the circumstances, the request did not unreasonably duplicate a prior request. The Committee ordered the Department to respond to the request within 10 business days.	
93-03	James Haywood vs. Corrections	Denied	Mr. Haywood requested records relating to an investigation by the Department of certain criminal charges against him. Mr. Haywood was an employee of the Department. The criminal charges against Mr. Haywood were dismissed and the criminal proceedings were terminated. No administrative action was pending against Mr. Haywood. The request was denied based on the classification of protected under UCA 63-2-304 (8). The Committee determined that the records were properly classified as protected. The Committee did not believe the public interest outweighs the interest favoring restriction. The appeal was denied.	

93-04	Sue Cherry vs. Utah State University	Granted	Ms. Cherry requested access to all files held by Utah State University with her name on it or that pertain to her and the decision regarding her retention. The requested was denied by the University. The University had classified the records as protected under UCA 63-2-304 (27). The Committee determined that the public interest outweighed the interest favoring restriction and ordered the release of the records.	
93-05	Kenneth Gray vs. Human Resource Management	Denied	Mr. Gray requested access to records and information regarding a meeting which occurred in 1991. The request was denied. The Department testified that no records exist of said meeting. The appeal was denied.	
93-06	Equifax Services vs. Public Safety: Driver License	Granted	Equifax requested access to certain elements of the Division's database of persons who hold a Utah driver's license. In particular, Equifax requested disclosure of the name, date of birth, and address of every person in the State holding a current license. The Division classified the records as private and denied the request. The Committee concluded that though the Division has properly classified the records as private, the requested information should be released to Equifax for the purpose it stated in its appeals on the grounds that the interest in that limited disclosure outweighs the interest favoring restriction.	
93-07	ACLU vs. Corrections	Denied	The ACLU requested documents and information regarding the inmate telephone system, monitored calls and certain identified calls. The appeal was denied based on the proper classification of protected.	

94-01	Karl Winsness vs. Salt Lake City Corporation	Denied	Mr. Winsness requested access to any records that constitute police policy governing "no knock - no announce warrants," "high risk arrests and searches", and "major incident responses". The Committee determined that no records exist. Therefore the appeal was denied.	
94-02	Julian Hatch vs. Natural Resources: Parks and Recreations	Denied	Mr. Hatch requested access to all records, requests, reports, and accountings for archeological digs and research done at Coombs site, Anasazi State Park. The appeal was denied. The records are classified as protected under UCA 63-2-304 (25)(26).	
94-03	Salt Lake City vs. Employment Security	Granted	Salt Lake City requested records showing the number of employees for each business of which it has record within Salt Lake City. The appeal was granted and the records were ordered to be released, for use as indicated by the City in its presentation to the Committee, and to be maintained confidential for such purposes.	
94-04	Deseret News vs. University of Utah	Denied	The Deseret News requested access to documents relating to the amount of licensing fee and royalty in licensing U of U-developed "cold fusion" rights. The appeal was denied based on UCA 53B-16-302 and UCA 63-2-304(2).	

94-05	Linda Watson vs. Human Services: Liability Management	Partially Granted	Ms. Watson requested access to a copy of resolution assistance committee report on her minor children. The Committee determined that part of the records were properly classified as protected under UCA 63-2-304 (8). This protected information is identifying names and information that is described in the indicated subsections of the Utah Code. The Committee determined that the larger portion of the records is not properly classified as protected but is releasable to Ms. Watson as the person to whom the records pertain. The appeal was granted in part. The Department was ordered to segregate and redact the information described in UCA 63-2-304(8)(a)(b) or (d).	
94-06	Michael Weibel vs. Logan City	Partially Granted	Mr. Weibel requested access to the police report regarding an investigation of wrongdoings in Logan's Park Department and a written agreement between the city, Scott Barrett and Steve Kyriopoulos. The Committee determined that no written agreement between the city and Mr. Kyriopoulos exist and therefore the request is denied. The portion of the police report pertaining to individuals whom the city contemplates no further action against is properly classified as public. The portion of the report pertaining to individuals against whom criminal action is contemplated or pending is protected under UCA 63-2-304(8). The appeal is granted in part. The portions identified as public are ordered to be released and the portions identified as protected are not be disclosed.	

94-07	Linda Watson vs. Human Resources: Family Services	Denied	Ms. Watson who have been temporarily deprived of the custody of her children requested access to all records the Division has relating to her children. The Department classified the records which were withheld as protected or controlled and that portions of the records are exempt under the Child Abuse Reporting Act UCA 62A-4-513. The Committee determined that the records classified as protected and controlled are properly classified. The Committee also agree that the records that were withheld pursuant to the Child Abuse Reporting Act were properly withheld. The appeal was denied.	
94-08	William Remine vs. Corrections	Partially Granted	Mr. Remine requested access to policy documents include Fdr 25, FGr25 and policy documents that govern anything required to be logged in the daily unit log; a list of inmates who are housed in Section 4 of Uinta II; and a list of staff who worked in Uinta II. The Committee determined that the policy documents are properly classified as protected. Therefore the release of the policy documents is denied. Regarding the list of inmates, the Committee determined that those records were properly classified as protected. However, the public interest outweighs the interest favoring restriction. Therefore, the list of indicated inmates is orders to be released provided the list does not include USP numbers. The appeal regarding the release of the list of staff requested is granted, insofar as the list is general, not requiring specifics such as shifts worked or more specific information regarding assignments.	

94-09	Sassy Fink and KSTU-TV vs. Utah State Hospital	Partially Granted	Ms. Fink requested access to records pertaining to the injury to patient Ronald Fink; records relating to any internal investigation into the incident causing the injury; and records of any disciplinary action taken against employee Chad Nelson during the course of his employment with the agency. The appeal is granted in part. The medical records pertaining to the injury of Ronald Fink are not to be released to KSTU-TV, on the grounds that they are private records. However, those records are to be released to Ms. Fink in her capacity as legal guardian. Items 2 and 3 relating to any internal investigation and disciplinary action taken against employee Chad Nelson shall be released to Appellants as public documents under UCA 63-2-201. The documents are specifically found not to be protected under UCA a63-2-304.	
94-10	William Remine vs. Corrections	Denied	Mr. Remine requested records from the Department regarding Mr. Remine that are classified as protected. The appeal was denied and the agency's decision is affirmed on the basis of UCA 63-2-304(11). It is further determined that the Department properly segregated its records under UCA 63-2-307, allowing Mr. Remine access to those records to which he is entitled.	

94-11	William Remine vs. Corrections	Denied	Mr. Remine requested access to all records that the Board of Pardons has regarding him that are classified as protected. Mr. Remine does not dispute that the requested records meet the definition of protected but urges they should nonetheless be released to him under the weighing provision of UCA 63-2-403. The appeal was denied. The Committee determined that part of the material requested consists of notes or internal memoranda prepared as part of the deliberative process of the Board of Pardons and as such is not within the definition of a record. The remainder of the material was determined to be properly classified as protected and the public interest does not outweigh the interest favoring restriction.	
94-12	Abigail Delfausse vs. Utah State University	Granted	Ms. Delfausse requested access to her personnel file that the University has classified as protected. Ms. Delfausse is concerned that the documents are incomplete in that they do not include all the material on which recommendations or decisions regarding her retention have been or may be made. The University argues that the records are protected under UCA 63-2-304 (27). The Committee determines that the records are properly classified as protected. However, the public interests outweighs the interest favoring restriction. The appeal is granted.	

94-13	United Television, KTVX vs. Board of Pardons	Denied	KTVX requested access to a video tape regarding an incident at BYU regarding an assault on Howard Hunter, an official of the LDS Church. The video tape was supplied to the Board of Pardons by the Utah County Attorney's office in response to a request for information regarding an inmate. The Church claimed copyright privilege of the video tape. The tape was provided to the Utah County Attorney's Office by the LDS Church for prosecution purposes. The Board of Pardons denied the request based on the theory that the it was not a record under UCA 63-2-103(18). The Committee determined that the video segment was not a record under UCA 63-2-103(18) because the owner of the video intended the video to be copyrighted and never published it. The appeal was denied.	
94-14	Thomas Garcia vs. Corrections	Granted	Mr Garcia requested access to medical records and an order revising the Department's denial of a fee waiver. The Department denied the request was made under the governing statute UCA 78-25-25 rather than GRAMA. The Committee determined that UCA 78-25-25 was inapplicable and the request was made under GRAMA. The appeal was granted and the denial of the fee waiver reversed.	

94-15	Linda Watson vs. Human Services: Family Services	Denied	Ms. Watson requested access to two letters from Dr. Kevin Gully, a supervising therapist for minor children of Ms. Watson and a complete unredacted letter of a third-party. During the hearing, it was determined that Ms. Watson had already obtained the two letters from Dr. Gully from another source independent of GRAMA. Thus, the appeal was denied as to those two letters on the grounds the request and appeal are moot. The Committee determined that UCS 62A-4A-412 and 78-3a-314(5) do not supersede GRAMA as to the third-party letter inasmuch as that letter is not covered by those sections because it was not obtained as a result of a report. The Committee determined that the redacted portion of the record is protected under UCA 63-2-304(8). The appeal is denied.	
94-16	Salt Lake City vs. Industrial Commission	Granted	Salt Lake City requested a rebuttal to the City's response filed by LaMar Macklin in the matter of LaMar Macklin vs. Salt Lake City; a withdrawal of charge filed by LaMar Macklin; and all other documents, exhibits, etc. which are relevant to the claims made by Mr. Macklin against the City. It appears that the City included the last of these 3 types of records in its request for completeness, but has withdrawn its request for that encompassing type of record. The Committee determined that UCA 34-35-7(14) does not apply to the circumstances of this case in which a party to proceedings requested records that are in the nature of pleadings in those proceedings. Thus, the indicated records are public records under UCA 63-2-201(1) and (2). The appeal is granted.	

94-17	Roger Penman vs. Corrections	Denied	Mr. Penman requested IR-1; IR-2; Supplemental reports and investigative reports concerning disciplinary case no. 393-2628. The Department supplied certain of the documents to Mr. Penman, but denied access to certain other of the documents it considered not covered by the request because they did not concern case no. 393-2628, and had denied access to the Investigative reports. The appeal is denied as to the Investigative reports. It was determined that the investigative reports were properly classified as protected under UCA 63-2-304(8) (9) and (11). The request for the other documents is deferred to the Department for further review and processing because of miscommunication between the parties as to the scope of the request.	
95-01	Clifton Panos vs. Tax Commission	Granted	Mr. Panos requested access to filing in the case before the Tax Commission, identified as appeal #94-1317. The Committee determined that the Tax Commission had properly classified the record series as protected, Mr. Panos is entitled to such portion of those records which can be segregated under UCA 63-2-307. The Committee ordered the Tax Commission to review and segregate the information Mr. Panos is entitled to from the protected information. The Committee also determined that the Tax Commission has the duty to classify records it uses and creates. The appeal was granted with the limitations indicated.	

95-02	Chris Carter vs. University of Utah	Granted with limitations	Ms. Carter requested access to patient schedules, patient care plans and hemo dialysis flow sheets prepared by the University of Utah Dialysis Unit. The records were classified as private and the request was denied. It was stipulated by the parties and found by the Committee that the records were properly classified as private. Ms. Carter had been terminated from her position and is seeking the records for the purpose of determining whether they be relevant to her position that the termination was wrongful. The University stated that certain personnel did have access to the records for consideration on the termination but that the termination was not based on the information in those records. The Committee determined that the interest in disclosure of the records outweighs the interest favoring restriction of access. Ms. Carter should have the same access to records that have been reviewed by University personnel regarding the termination issue. The Committee order that the University should redact and segregate the records under UCA 63-2-307 so as to protect the privacy interests of individual patients while disclosing the information that is relevant to Ms. Carter's position. The Committee also ordered that Ms. Carter must limit her use of the indicated records to termination and grievance proceedings to which the records may be relevant. The appeal was granted with the limitations indicated.	
95-03	Walter Brantzeg vs. Corrections	Denied	Mr. Brantzeg requested access to psychological results from personality inventories, I.Q. tests given to him by the Department and reports indicating the medication he was given. The Department classified the records as controlled and denied the request. The Committee determined that the records were properly classified as controlled or protected. The appeal was denied.	

95-04	Stephen Hughes vs. Utah Division of Investigation	Denied	Mr. Hughes requested access to all records relating to Mr. Hughes that may be held by the Division. The Division declined to state whether it has any records relating to Mr. Hughes and states that under UCA 63-2-304(8) any such records are protected. The Committee determined that any such records would be properly classified as protected. The appeal was denied.	
95-05	Lance Wilkerson vs. Tax Commission: Auditing Division	Partially Granted	Mr. Wilkerson requested access to manuals, policy statements and other materials on the conduct of audits in general and not as to any specific audit. The Committee determined that the Tax Commission had already provided some of the materials to Mr. Wilkerson. Regarding the records relating to audit selection and audit procedures, those records are properly classified as protected under UCA 63-2-304(13) and are not to be released. Regarding the records related to time tracking and training, the answer to petition (sample letter) and all other records requested that do not relate to audit selection and audit procedure, the Committee determines that these records are public and are to be released. The appeal was partially granted.	
95-06	Herald Journal vs. Utah State University	Granted	The Herald Journal requested access to contracts between Utah State University and Larry Eustachy and John L. Smith. The Committee determined that the records are public under UCA 63-2-301 (2)(d) and (e). The appeal was granted.	

95-07	A-1 Disposal vs. Davis County Solid Waste Management District	Granted	A-1 Disposal requested access to written communications between the Special District and all haulers of waste operating in the District that relate to or constitute ordinance violation citations and written records prepared by or for Kent Lindsey regarding his observations of haulers picking up or disposing of waste. Regarding the records relating to citations, the Committee determined that those records were not properly classified and are releasable as public under UCA 63-2-201. Regarding the records prepared by or for Kent Lindsey, the Committee determined that those records were properly classified as protected. However, the Committee determined that the public interest outweighs the interest favoring restriction. The Committee order A-1 Disposal to maintain these records confidential and not to disclose them to anyone except to show a particular hauler records of its own activities, unless otherwise directed by Court order. The appeal was granted with limitations.	
95-08	Dolores Ruvalcaba vs. Corrections	Granted	Ms. Ruvalcaba requested access to medical and prison records of Edward Lujan from the time of his incarceration to the time of his death while incarcerated. The Committee determined that the records have become “public” under UCA 63-2-909(1), under the particular facts of this case, though they were properly classified as private under UCA 63-2-302(1) during the subject’s life. The relevant and controlling facts are Mr. Lujan’s death together with the consent and request of all of Mr. Lujan’s claimed relative’s who appeared at the hearing that the records are ruled public. The appeal was granted.	

95-09	Salt Lake Tribune vs. Utah Division of Risk Management	Denied	The Tribune requested access to all documents pertaining to the claims reflected on an attached list...including but not limited to, claim forms or any other paperwork filed pertaining to the claims, and any and all settlement documents. The Committee determined that any records of the Tribune's that constitute initial claims or final settlement agreements are not protected under UCA 63-2-304(23) but are public. Risk Management contends that all records of initial claims and final settlement agreements have been provided to the Tribune. Under UCA 63-2-304(23) all records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund are protected. Therefore the appeal is denied with the exception that any remaining records of initial claims or final settlement agreements not supplied to the Tribune will be released.	
95-10	Kim & Nancy Julian, Philip & Pam Roundy vs. University of Utah Medical Center	Granted	The petitioners divided their appeal into 11 areas. See Decision and order for the Committee's decision regarding each of the 11 areas.	
96-01	Paul Harris vs. Commerce: Occupational & Professional Licensing	Denied	Mr. Harris requested records identified as "three complaints" and requests the release of names, signatures, addresses and phone numbers. The Department classified the records as protected as part of an investigation file under UCS 63-2-304(8). The Committee determined that the records were properly classified as protected. The appeal was denied.	

96-02	Robert Strange vs. Corrections	Denied	Mr. Strange requested access to information regarding a background investigation of Mr. Strange which was the basis for the Department's denial of Mr. Strange's employment application. The Committee determined that the requested information included a personal recommendation concerning an individual and that the disclosure is not in the public interest and therefore properly classified as protected. The appeal was denied.	
96-03	Michael Whiteman vs. Corrections	Denied	Mr. Whiteman requested access to an IR1 form concerning a disciplinary matter. The Department classified the records as protected under UCA 63-2-304(8). The Committee determined that the record was properly classified as protected. The appeal was denied.	
96-04	Walter Thomas vs. Corrections	Denied	Mr. Thomas requested access to medical and psychological records maintained by the Department. The information had been classified as protected by the Department. The Committee determined that records were properly classified as protected. The appeal was denied.	
97-01	Gregory Bedard vs. Corrections	Granted with conditions	Mr. Bedard requested access to policies in the A and F manuals of the Departments Policies and Procedures. The appeal was granted but Mr. Bedard's access is subject to conditions acceptable to the Department that are properly based on the Department's regular and lawful policies including those policies mandated by prison security.	

97-02	Society of Professional Journalist vs. Board of Regents	Denied	The Society of Professional Journalist requested access to records containing personally-identifiable information related to the University of Utah presidential search applicants or nominees. The Committee determined that the information requested is private under UCA 63-2-302 (2) (a). The Committee determined that the interest favoring restricting the information outweighs the public interest. The appeal was denied.	
97-03	Joseph O'Keefe vs. Utah State Retirement System	Denied	Mr. O'Keefe requested information regarding the number of work hours per week per firefighters for purposes of the State Retirement System and related to lobbying on behalf of the Retirement System. The State Retirement System asserted that the State Records Committee did not have jurisdiction to hear the appeal. The State Retirement System did not appear at the hearing and informed the Committee that it would not do so because such participation might be interpreted as consent to or waiver of its argument of lack of jurisdiction by the State Records Committee. This absence by the Retirement System rendered the hearing particularly difficult for the Committee. Despite the concerns of the Committee the appeal was denied. The Committee determined that it appears that UCA 49-1-201(4) exempts the Retirement Office and Board from GRAMA.	
98-01	KSL vs. Juab County Sheriff	Granted	KSL requested a jail booking photograph of an inmate. The request was denied. It was the position of the county that the release would jeopardize the facility. The Committee granted the appeal.	

98-02	Ellis Dean Hovey vs. Human Services	Granted	Mr. Hovey requested access to the address and telephone number of his minor child who resides with the mother. The request was denied based on the record being classified as private under UCA 63-2-302(2)(d). The appeal was granted. The Committee upheld the private classification was correct. However, the Committee determined that based on UCA 63-2-403(11)(b) that upon consideration and weighing of various interests, that the public interest favoring access outweighs the interest favoring restriction.	Yes
98-03	William Jacob vs. American Fork	Denied	Mr. Jacob requested access to records concerning an investigation of the police department as referred to in a news article. The request was denied based on the argument that all documents had been released. The appeal was denied with the following condition. That if any additional information is found, the records would be released.	Yes
98-04	William Jacob vs. American Fork	Denied	Mr. Jacob requested access to a letter from the former mayor to the police chief allegedly regarding the termination of employment of the police chief. The request was denied by the City. The appeal was denied. Reasons for the decision were that the indicated letter is protected under UCA 63-2-304(9)(a) and (b) as a record created for discipline purposes.	Yes
98-05	Michael Sims vs. Utah Educational Network	Granted	Mr. Sims requested access to computer logs regarding utilization of the Internet by students and school personnel of Utah public school. The request was denied. It was the position of UEN that the logs belonged to the Schools and not UEN. The Committee determined that the logs were public and order the logs released provided any information that would identify individuals would be redacted.	

98-06	William Jacob vs. American Fork	Denied	Mr. Jacob is requesting copies of records relating to an investigation of the police department started by Council members Storrs and McKinney as referred to by Council member Brown on page 37 of the city council minutes. The request was denied on the basis that no documents exist. The appeal was denied since based on the evidence presented at the hearing, no records exist.	Yes
98-07	William Jacob vs. American Fork	Partially Granted	Mr. Jacob is requesting that the City supply him "court records, which are under the direction and control of the City". In dispute was a list of 92 records which were classified as protected. The appeal was granted in part. Refer to the Decision and order for a detailed list of the documents released and denied.	Yes
98-08	George Brown vs. American Fork	Partially Granted	Mr. Brown requested copies of all documents that pertain to, refer to or related to American Fork vs. George Brown, Criminal No. 972000503. His request was denied based on the protected classification involving attorney work product, etc. The appeal was granted in part. See decision and order for detailed description of records which were denied and released.	Yes
98-09	Lincoln Smith (Mustafa Abdul Aziz) vs. Corrections	Granted	Mr. Smith requested access to property confiscation forms with case #397-9699. His requested was denied based on the Departments determination that the forms did not contain Mr. Smith's name and therefore were private. Prior to the hearing, the Department located several confiscation forms pertaining to case #397-9699 that were not identified by name. Remaining in issue were three additional forms which identified the names of other inmates. The Department did not refute Mr. Smith's claim that the items listed on these forms were taken from his cell. Therefore, the Committee concludes that there is a reasonable possibility the items belong to Mr. Smith and therefore Mr. Smith is the subject of the forms and is entitled to them under UCA 63-2-202 (1).	

99-01	Paul Knoll vs. Corrections	Granted	Mr. Knoll requested access to a complete list of all incoming and outgoing mail logs. His request was denied on the ground that the cost to produce the requested documents would exceed $50 and therefore require advance payment under UCA 63-2-203(8), and the advance payment was not received. The parties stipulated to a resolution: Mr. Knoll will file a request for copies of the documents in 200 page increments. (200 pages are within the $50 limit) The Department will redact information on the log that does not apply to Mr. Knoll.	
99-02	Charles Watkins vs. Corrections	Denied	Mr. Watkins requested access to his mental health records. The Department of Corrections denied his requested based on the classification of the records as controlled. The appeal was denied based on the ground that the records classified as controlled do meet the standard in UCA 63-2-303. A relevant consideration is that under the Labrum doctrine an inmate would be allowed access to any controlled documents used in legal proceedings involving him, and therefore his civil rights are protected.	
99-03	Leo Dirr vs. Weber State University	Partially Granted	Mr. Dirr requested access to student election vote tallies and computer log lists. Weber State had classified the records as protected as part of an ongoing investigation. The State Records Committee reclassified the vote tallies as public. The Committee determined that they were not properly classified as protected under UCA 63-2-304(9). The Committee determined the computer server lists are properly classified as protected under UCA 63-2-304(9) and are not to be release.	

99-04	Daniel Moquin vs. Utah Attorney General's Office	Partially Granted	Mr. Moquin requested access to a copy of the investigation relating to allegations of misconduct of certain other employees of the AG's Office. Mr. Moquin's request extended to any records placed in the personnel files of those employees that arose out of the allegations. Mr. Moquin also requested copies of all documents relied on in preparing a May 29, 1999 letter notifying Mr. Moquin of possible discipline for his conduct relative to certain other employees in the AG's Office. The appeal was partially granted. The request for records regarding allegations of misconduct of certain other employees was granted. Those records were determined to be formal charges or disciplinary actions against a past or present governmental employee that meet the requirements of UCA 63-2-301(2)(o) and Rule R477-11-1 and are not otherwise restricted, and hence are public records. The request for the copies of records relied on in preparing the May 27 letter was denied based on the grounds that those records are protected under UCA 63-2-304(9)(a) and (b). Mr. Moquin had also requested copies of medical records (a psychiatric evaluation ordered by the AG's Office). At the hearing the AG's Office was prepared to release the evaluation.	
99-05	Ernest Chacon vs. Department of Corrections	Appeal Denied	The petitioner sought access to an audio recording of an interview and records concerning an investigation conducted by the Department regarding the petitioner's knowledge of an incident. The records had been classified as protected by the Department. Upon further review, the Department stated that the recording did not exist. The Committee determined that the investigative records were properly classified as protected under UCA 63-2-304(9)(e), (10) and (12). Further having reviewed the disputed records and upon balancing the interests in favor of disclosure against the interests in favor of non-disclosure, the Committee concluded that the records should not be disclosed.	

99-06	Blaine Jordan vs. State Treasurer's Office, Unclaimed Property	Appeal Denied	The petitioner sought access to the list of individuals with unclaimed property and the dollar amount of each item of unclaimed property. The records were classified as private by the Agency. The Committee determined that the records were properly classified as private. The appeal was denied.	
99-07	Julian Hatch vs. Utah School and Institutional Trust Lands Administration	Appeal Denied	The petitioner sought access to all records between Chris Robinson and the Trust Lands Administration in 1998-1999 regarding Boulder property; Gibbs Smith's Application (and attachments) to Lease the subject property per a Trust Lands Administration letter to Appellant dated February 26, 1999; Smith's Request for Confidentiality of Business Records related to the Application. The Agency stated that communications between Mr. Robinson and the agency were conducted by telephone or e-mail and the e-mails have been deleted from the agency's computer system as part of routine system maintenance. The application to lease the property and Mr. Smith's request for confidentiality were supplied to the Petitioner at the hearing. The remaining records regarding Mr. Smith's application were determined to be protected under UCA 63-2-304(2), (4) and (6) and 63-2-308. The Agency was advised to work with the State Archives to improve its handling of its records.	

99-08	Gregory T. Dunn vs. Tooele City	Granted	The petitioner sought access to records relating to claims files against the city. The City had provided certain information to the petitioner, but had redacted the names and address of the claimants classifying the names and addresses as private on grounds that releasing the information would constitute a "clearly unwarranted invasions of personal privacy". The appeal was granted. The Committee determined that the indicated records are public under UCA 63-2-201(2) and that their inclusion of names and addresses does not constitute an unwarranted invasion of personal privacy. The Committee determined that it is in the public interest to allow access to these records that show how public monies are being spent.	
99-09	Mary Jean Meats vs. Logan City Police Department	Granted	The petitioner sought access to her complete employee file and copies of "anything will her name mentioned in the management files" maintained by the governmental entity. It was and is the position of the police department that there were no remaining records which had not been released to the petitioner, but acknowledged that additional records might be generated, and possibly even found. The appeal was conditionally granted. The petitioner argued that unproduced documents of the type requested must exist based on certain alleged circumstances and alleged statements of others. The Committee was unable conclusively to determine whether any unprovided records existed. However, upon the good faith acknowledgment of the police department that additional records might be generated, and possibly even found, the Committee orders, conditionally, that if such records do appear, copies thereof shall be provided to the petitioner.	

99-10	Taj N. Becker vs. Public Safety	Denied	The petitioner sought access copies of the "education record(s)" and "employment record(s)" of a certain named employee of Department. The Department maintained and continued to maintain at the hearing that there are no remaining records answering Appellant's description that had not already been provided to Appellant. At the conclusion of the hearing Appellant did not dispute the conclusion that further records of the type requested do not exist. The State Records Committee, having reviewed the written materials submitted denied the appeal on grounds that records of the type requested not already provided by Appellee do not exist.	Yes
99-11	David Schlottman vs. Commerce	Denied	The petitioner sought access to a copy of "All records including secret records in my file" (emphasis in original) that the Department maintained in the petitioner's disciplinary file. The Appeal was denied. The Committee determined that the records are correctly classified as protected under Utah Code Ann. § 63-2-304(9). However, the Committee chose to weigh the various interests and public policies pertinent to the classification and disclosure or nondisclosure under Utah Code Ann. § 63-2-304(11)(b), which necessitated review in camera of the disputed records. Upon that review and weighing, the Committee determines that "the public interest favoring access" does not "outweigh[] the interests favoring restriction of access," and hence the petitioner's request for the records is denied. The Department shall supply a list of the records to which access was requested and denied, under Utah Code Ann. § 63-2-205(2)(a).	

99-12	Suzanne Pape vs. Public Safety	Denied	The petitioner sought access a copy of "all pre-internal affairs investigation documents requested by the Department and "all documents not created or maintained for the internal affairs investigation" pertaining to the Department's investigation of the petitioner. The Appeal is denied based on Utah Code Ann. § 63-2-304(9)(a), (b), (d), and (e).	
99-13	Penny Atkinson vs. City of West Jordan	Denied	The petitioner sought an order of the Committee prohibiting the City of West Jordan from disclosing an investigation report regarding allegations of impropriety brought against Ms. Atkinson by a co-employee on grounds it was "protected" under Utah Code Ann. § 63-2-304 (25) and "private" under Utah Code Ann. § 63-2-302(2)(d). The Appeal was denied. The Committee determined indicated records are public under Utah Code Ann. § 63-2-201(2).	

99-14	Barbara Haynes vs. Logan City Police Department	Granted	The petitioner sought to her employer, to supply her a copy of "grievance tapes" of a hearing between her and her supervisor, her "department file" and a "copy of the Noise Survey Results conducted as a result of [her] hearing loss." The City did not dispute that any records of the type requested are now properly releasable to Ms. Haynes, but asserted that until recently the records were part of a pending investigation file. The City stated that since the investigation is now closed, the requested records have been released to Ms. Haynes. Ms. Haynes acknowledged receiving some records from the City on the day of the Records Committee hearing (November 10, 1999), but asserts, by her own comment and through comment of another person at the hearing, that there was a much larger file of materials regarding her, at least some of which she has not been supplied. The appeal was granted. The City asserts that it has supplied to Ms. Haynes all the requested records. There being no practicable way of disputing that assertion, the Appeal must be considered moot. However, the Committee observes the serious and repeated failure of the City to respond to the petitioner's requests, even with a denial as called for by GRAMA, or to inform the Committee ahead of the hearing what the City's position was or that it intended to supply the records at the hearing.	

99-15	Cathy Cartwright vs. Corrections	Granted with conditions	The petitioner is seeking access to copies of the completed criteria forms for the two CA II positions and the one CA IV position and copies of the completed CA Interview Notes for those same positions. The Appeal was granted. The Committee determined that the records are correctly classified as protected under Utah Code Ann. § 63-2-304(9). However, the Committee chose to weigh the various interests and public policies pertinent to the classification and disclosure or non-disclosure under Utah Code Ann. § 63-2-403(11)(b), which necessitated review in camera of the disputed records. Upon the review and weighing, the Committee determines that "the public interest favoring access outweighs the interest favoring restriction of access," and hence Appellant's request for the records is granted. Use and disclosure of the records ordered released shall be limited to use in the grievance procedure identified by Appellant in her Memorandum, under Utah Code Ann. § 63-3-403(11)(c).	
00-01	DataLister vs. Labor Commission	Denied	DataLister is seeking access to the Labor Commissions: names of employers required by law to be reported by insurers / employers to the State; each such employer's address; each employer's insurer of record; and each employer's insurance policy renewal date. The Appeal is denied. The records are correctly classified "protected" as trade secrets under Utah Code Ann. §§ 63-2-304(1) and 13-24-2(4) and 63-2-308(1). The Committee further finds that Appellee complied with Section 63-2-308(1).	

00-02	Roger Humphries vs. Washington County School District	Denied	Roger Humphries is seeking access to copies of two psychological evaluations prepared by doctors who examined Mr. Humphries in connection with the District's notice of intent to terminate Humphries' employment. The District declined to provide the two evaluations on grounds they were "controlled" under Utah Code Ann. § 63-2-303. The Appeal is denied. The records are correctly classified "controlled" under Utah Code Ann. § 63-2-303. In view of the facts of the case and the nature of "controlled" psychological evaluations, the Committee declines Mr. Humphries's request that the Committee weigh factors under Utah Code Ann. § 63-2-403(11).	
00-03	Matt Barlow vs. Department of Commerce	Granted	Mr. Barlow is seeking access to the investigation policy and procedure manual maintained by the Division of Occupational & Professional Licensing. The Committee determined that the records were properly classified as protected under UCA 63-2-304(9). However, after reviewing the documents and weighing the various interests, determined that the records should be provided to Mr. Barlow. The appeal was granted provided that Mr. Barlow shall not disclose any portion of the manual to third parties, except agents or attorneys acting on his behalf before the Division.	
	Mark Bergman vs. Labor Commission		The issue in this appeal is the request by Mr. Bergman to review the classification and the release of 5 documents by the Commission which Mr. Bergman alleged contained his private information. After hearing the arguments and reviewing the documents the Committee issued a finding of fact and conclusion.	

00-04	Explore Information Services vs. Public Safety	Granted	The petitioner sought access to the certain motor vehicle record information maintained by the Department. Explore contented that they qualify to obtain this information under the Driver Personal Protection Act. The Department has previously charged Explore a fixed monthly fee for the driving record data. Although the Department asserts it has classified the driving record data as "private", it acknowledges that driving record data might be released in connection with a different request or provision. Upon hearing the evidence, the Committee finds the Department's decision was in error and granted the request. The Committee determined that the records were properly classified as "private", however, Explore qualifies as an entity authorized to obtain this information.	Yes
00-05	Wasatch Courier vs. Wasatch County	Partially Granted	The petitioner sought attorney billing statements for outside legal services. Wasatch County classified the records as protected under the Attorney-client privilege and Attorney work product doctrines. Upon hearing the evidence the Committee determined that some of the information did not come under these doctrines and ordered the information released.	
00-09	Adrian Hickey vs. Board of Pardons	Denied	The petitioner sought a fee waiver for photocopies of all Board of Pardons decision and rationale sheets for January 1992 through the present. Upon hearing the evidence, the Committee determined that the waived costs for the Board would be excessive.	

00-06	Kristin Cappel vs. University of Utah	Denied	The petitioner sought e-mail communications, interview notes, drafts of a report to the NCAA, and the names of seven applicants for Initial Academic Eligibility Waivers from the University of Utah. The University classified the e-mails as protected under the Attorney-client privilege doctrine. The University classified the drafts and the interview notes as protected under the Attorney work product doctrine. The names of the Initial Academic Eligibility Waiver applicants were not disclosed because disclosure is regulated by the Federal Educational Rights and Privacy Act. Upon hearing the evidence, the Committee upheld the University's decision and denied the request.	
00-07	William Munro vs. Corrections	Denied	The petitioner requested access to "nine column" rosters of Corrections' employees. The Department classified the information as protected citing release of the information could jeopardize correction facilities' security. Upon hearing the evidence the Committee upheld Corrections' decision and denied the request.	
00-08	Deseret News vs. Tax Commission	Denied	The petitioner sought information about tax liens on candidates for unpaid income tax. The Tax Commission denied the request based on the requirements of UCA 59-1-403. Upon hearing the evidence, the Committee upheld the agency's decision.	
00-10	People for the USA vs. Kane County		The petitioner sought Commission meeting minutes, road agreements between Kane County and the U.S. Bureau of Land Management, and maps and plat maps of county roads. The agency agreed to provide the records, so no decision was issued.	

00-11	Jess Green vs. American Fork City	Denied	The petitioner requested documents that were faxed from the American Fork City Police Department. The Committee determined, upon hearing testimony, that American Fork City did not possess the records in question. The Committee also determined that not all documents transmitted on a police department fax machine become public records. The Committee determined that the records from the American Fork Police Department fax, requested by the appellant were private transmittals, not public records..
01-01	Gordon Thomas vs. Corrections	Dismissed	Petitioner requested names and numbers of sex offenders housed at the Draper prison. The petitioner decided not to participate in the hearing. The Committee decided to dismiss the appeal without prejudice and allow a hearing if the petitioner could justify his refusal to participate.
01-02	Associated Press vs. Attorney General	Partially Granted	The petitioner requested investigative case files of Winter Olympics bidding. The agency classified the records as protected because they pertained to ongoing investigations. After weighing the issues the Committee determined that the records were properly classified as protected, but that the public's right to know outweighed the protected interests. It was determined that Information identifying confidential informants would not be released.
01-03	Adrian Hickey vs. Corrections	Denied	The petitioner requested strip cell logs, out of cell time logs and contracts. The Committee determined that the strip cell and out of cell time logs were properly classified as protected. The Committee also determined that, although the petitioner had the right to access the disputed contracts, that right did not change the conditions of the petitioner's incarceration. The Committee decided the agency was not obligated to provide the records in a manner inconsistent with providing access to citizens who were not incarcerated.
01-04	Michael John Bixby vs. Division of Risk Management	Denied	The petitioner requested records pertaining to a traffic accident involving a Department of Corrections van in December 2000. The Division of Risk Management asserted that records pertaining to claims against the Risk Management Fund were protected under UCA 63-2-304(24). Upon hearing testimony, the Committee determined that the records were protected and denied the appeal.

01-05	Barbara Schwarz vs. Division of Mental Health	Granted	The petitioner requested access to all records pertaining to her in the custody of the Division of Mental Health. The Division released an electronic mail message regarding the petitioner, but withheld the name of the referrant. Upon hearing testimony, the Committee ordered the release of the referrant's name. The Agency subsequently appealed the decision to District Court.
01-06	U.S. Chamber of Commerce and U.S. Chamber Institute for Legal Reform vs. Attorney General	Granted	The petitioners requested access to records pertaining to the selection of outside counsel for tobacco litigation. Upon hearing testimony, the Committee ordered the release of the record. The Agency subsequently appealed the decision to District Court.
01-07	Colorado Legal Services vs. Department of Agriculture	Denied	Petitioner requested a fee waiver for copies of records pertaining to the death of J. Antonio Casillas. Upon reviewing the case, the Committee determined the fees were reasonable and denied the request.
01-08	Meats vs. Logan City	Partially granted	Petitioner sought records pertaining to her employment with Logan City Police Department. Testimony revealed that the city had provided access to most requested documents, but had overlooked others. Upon hearing testimony the Committee determined that most of the documents had already been released and ordered the release of privilege logs and search of electronic records for any remaining documents.
01-09	Jacob vs. American Fork City	Denied	Petitioner requested access to records pertaining to commissions paid to Hunter and Associates by insurance companies, and meetings conducted between Hunter and Associates and American Fork City's Departments. Upon hearing testimony, the Committee determined that American Fork City did not have documentation "regarding services rendered by Mr. Hunter" and the City did not have custody of the commission records.
01-10	Packaging Corp. of America vs. Labor Commission	Partially granted	Petitioner requested access to an OSHA complaint file and the identity of the complainant. Upon hearing testimony, the Committee determined the identity of the individual was properly withheld under UCA 34A-6-301 and the case file was properly classified as protected. Using the weighing provision the Committee released the redacted case file to the petitioner.

01-11	Jacob vs. American Fork City	Granted	Petitioner requested all bid responses to a Request for Proposals for Human Resource Employee Benefits consultants. American Fork City stated the records could not be found. Upon hearing testimony, the Committee determined that the unsuccessful bids had been properly destroyed according to the Municipal General Retention Schedule, but the successful bid should have been available at the time of the petitioner's request. The Committee's Decision and Order informed American Fork City of a possible violation of GRAMA due to the premature destruction of the successful bid.
02-01	Poll vs. South Weber City	Denied	Petitioner requested access to closed meeting minutes pertaining to city attempts to acquire land on 1375 E. in South Weber City. Upon hearing testimony, the Committee determined that the meeting minutes were properly classified as protected because the meetings were closed.
02-02	Rice vs. Dept. of Corrections	Denied	Petitioner requested policies and procedures pertaining to involuntary mental health treatment and cell searches. Upon hearing testimony, the Committee determined that the requested records were properly classified as protected.
02-03	McCoy vs. Attorney General's Office	Granted	Petitioner requested contracts between the state and an outside law firm in two legal cases. The Committee determined, after hearing testimony, that the records were not properly classified and ordered them released.
02-04	Sersland vs. Div. of Wildlife Resources	Denied	Petitioner request records specifying the locations of wildlife "guzzlers." Upon hearing testimony, the Committee determined that the records were properly classified as protected.
02-05	Pace vs. Utah Transit Authority	Partially Granted	The Disability Law Center challenged UTA on denial of access to certain records on wheelchairs and scooters who use its paratransit service. Information requested for accident, injury, and incident reports was denied. UTA is authorized to hold personal identifying information contained in these records. However, the fact that someone is in a wheelchair without any other personal information determines the information as not private. The SRC, thus, granted in part and denied in part Pace's request.
02-06	Broome vs. Murray City	Denied	Mr. Broome requested the addresses of licensed dog owners. Access was denied by the SRC because the disclosure of such records would be a violation of one's privacy. Also, such records are designated as private.

02-07	Poll vs. South Weber	Denied	Poll sought access to the legal opinions of South Weber City's attorney concerning a proposal on property and the City's decision regarding that proposal. The SRC denied access to such records due to their classification as protected and privileged from disclosure of confidential attorney-client communications.
02-08	Hickey vs. Corrections	Denied	Inmate Hickey requested copies of photographs taken by the Appellee that were of his tattoos. Access was denied by the SRC in that such materials are not required to be obtained and kept by Corrections. Pictures of tattoos are taken for comparison and recognition of affiliation with gangs. However, Hickey's tattoos were not identified as being gang related and were not maintained. Therefore, it is not within Corrections responsibility to maintain and or give them back.
02-09	Cramer vs. Murray City	Denied	Inmate Cramer sought various child witness interview transcripts, police department policies and other documents he believed related to his criminal case. The document containing the interview of the child was deemed private and all other documents were not located. Therefore the SRC denied the request of all records and affirmed Murray City's decision.
02-10	Powell vs. Lehi City	Denied	Powell sought all visual and or audio records of his visit to the Lehi library including, but not limited to, his interactions with the staff. SRC denied the request due to the fact that the items in question were not in existence due to equipment failure.
03-01	Darren C. Bluemel vs. Dept. of Public Safety	Granted	Bluemel sought access to his DNA profile maintained by the Department of Public Safety. The SRC held that Bluemel was entitled to access his DNA profile on the grounds that Public Safety must follow the mandates set forth by the Legislature in Utah Code Ann. Sec. 63-2-202(1), since he is the subject of the record and the exception in Sec. 53-10-406(4) was inapplicable to this case.

03-02	Douglas D. Jones vs. Dept. of Human Services, Office of Recovery Services	Denied	Jones sought an order compelling ORS to provide (1) all communications between O.R.S. and their legal counsel, (2) "all records that show ownership of property, business, stocks, bonds or title to any thing with a monetary value," and (3) "all protected and non-protected government information in my file that concerns me, ownership in anything and communications between attorneys and anybody who has been involved with my files." The SRC denied the appeal on the grounds that ORS had produced all records in its possession responsive to the request. Since Mr. Jones' request included attorney communications, the Committee further advised Mr. Jones that such records are typically classified as protected.
03-03	Tolton v. Town of Alta	Partially Granted	Tolton sought access to various records he maintains are in the Town of Alta's possession, as identified in records requests dating back to May 28, 2002. The Town maintained that it has either responded to Petitioner's requests or was unable to do so because the records were not identified with reasonable specificity. Similarly, the Town maintained that the claimed lack of specificity in combination with the volume of requests from Petitioner (and persons associated with him) have become unduly burdensome on the Town. The SRC held that the volume of Petitioner's requests is not a recognized basis for denial of access, provided that the request at issue does not "unreasonably duplicate[] prior records requests from that person." Second, the SRC held that where Petitioner requested inspection of records, the Town shall provide a secure area for Petitioner to do so. The Town was entitled to establish and enforce reasonable security measures to safeguard any public documents it makes available for inspection, but it may not charge Petitioner a fee if it chooses to have a staff person present during the inspection.
03-04	Inner City Press, Community on the Move & Fair Finance Watch vs. Utah Attorney General	Appeal denied	ICP sought records related to the recent settlement with Household International, Inc. The SRC found that the records described as drafts, settlement negotiations, attorney communications and attorney work product are properly classified as protected under Utah Code Ann. §§ 63-2-304(16), -(17), -(22), -(31) and -(33). Moreover, the documents containing the State of Utah's financial information, described in category four, could cause financial injury to the state if abused and are therefore properly classified as protected records.

03-05	Brent Poll vs. South Weber City	Appeal granted	Poll sought records relating to a city council presentation from U.S. Development concerning a potential land transaction involving the city and that company.
03-06	Sean Timothy Hughes vs. Utah Dept. of Corrections	Appeal granted	Audio tapes made during nine disciplinary hearings.
03-07	Kevin Tolton vs. Town of Alta	Appeal partly granted	Various documents petitioner maintains are, or should be, in the Town of Alta's possession
03-08	Ricardo Rodriguez vs. Utah Board of Pardons and Parole	Appeal denied	Documents used by the Board of Pardons and Parole (the "Board") in petitioner's recent re-determination hearing
03-09	Robin C. Boon vs. Utah Transit Authority	Appeal granted	Handwritten notes of Lorin Simpson and “other documents prepared by Lorin Simpson and Nancy Malecker” concerning appellant’s 2002 performance review
03-10	Frank Medel, Jr. vs. Utah Dept. of Public Safety	Appeal denied	All written reports generated by the Utah State Crime Lab in the analysis of physical evidence of specific incidents
03-11	Jeff Iverson vs. West Bountiful City	Appeal partly granted	Payroll information about the city manager

State Records Committee

Appeal Decision Summaries, 2004-2005

Case Number	Case Title/Participants	Records Sought	Ruling
04-01	Jeremy Beckham vs. University of Utah	All approved protocols for all approved research currently utilizing baboons or macaques	Appeal partly granted
04-02	Brian K. Stack vs. Utah Dept. of Corrections	Offender Management Review Committee results regarding prisoners referred to OMR for communicating with women prisoners	Appead denied
04-03	William Jacob vs. American Fork City	Records of any investigation conducted by the mayor or city council concerning the qualifications of any candidate for office	Appeal denied
04-04	Southern Utah Wilderness Alliance and the Wilderness Society vs. Utah State Attorney General	Records concerning potential applications for recordable disclaimers of interest for Utah roads, specifically R.S. 2477 rights of way	Appeal partially granted
04-05	Paul Payne vs. Utah Dept. of Corrections	Employee list/personel roster	Appeal denied
04-06	Victor Orvis vs. Pleasant Grove City	All lists created by [Pleasant Grove] City personnel involving all businesses or persons who were mailed or otherwise received [Carol Emery's July	Appeal partly granted

		19, 2001] letter regarding business license enforcement	
04-07	Larry Vernon vs. Coalville City	The taped recording parts of Coalville City Council Meetings referred to in the available minutes of City Coucil Executive Session meetings.	Appeal denied
04-08	Lisa Olsen vs. Utah Department of Human Services	Qualitative Case Review on Jesse Olsen	Appeal denied
04-09	Jeremy Beckham vs. University of Utah	A fee waiver for the fees associated with producing all approved protocols for all research currently utilizing baboons and/or macaques.	Appeal denied
04-10	Steven Onysko vs. University of Utah	Final Grade Report for MG EN 499, Fall Quarter 1995.	Appeal denied
04-11	Haik vs. Town of Alta	The Town of Alta to permit inspection during normal business hours and require the Town of Alta to timely respond to pending records requests.	Appeal partly granted
04-12	LaPlante/Canham (Salt Lake Tribune) vs. Sandy City	The names of all current Sandy City fire and police employees.	Appeal granted
04-13	Collier Hoffman vs. Division of Occupational and Professional Licensing	Any investigations/complaint information regarding Jo-Anne Collier Hoffman.	Appeal dismissed
04-14	Poll vs. South Weber City	Access to draft minutes of the August	Appeal Denied

		26, 2004 South Weber City Planning Commission meeting.	
04-15	Haik vs. Town of Alta (noncompliance)	Sanctions for the Town's noncompliance with the Order and Decision dated September 21, 2004.	Appeal granted
04-16	LaPlante (Salt Lake Tribune) vs. Salt Lake City Police Department	All initial reports from a 'missing person' case inolving Lori Kay Hacking, filed on or about July 19, 2004" and "all initial reports involving suspect, victim or involved person Mark Douglas Hacking.	Appeal Denied
04-17	Steed vs. Duchesne County	Access to various documents he believes are in Duchesne County's possession.	Appeal granted
05-01	Ostler vs. State of Utah, Departments of Public Safety, Commerce, Human Resource Management, Human Services, Attorney General's Office, Labor Commission, and Salt Lake Community College	Access to various documents referencing his name that he believes are in the custody of the various agencies of the State of Utah.	Appeal Denied
05-02	Salt Lake City Corporation vs. Salt Lake Mayor's Records Appeals Board	Salt Lake City Corporation appeals the decision of the Salt Lake City Mayor's Records Appeals Board granting access to certain records requested by Neal K. Ostler.	Appeal partly granted
05-03	LaPlante/Canham (Salt Lake	Records pertaining to overtime and	Appeal granted

	Tribune) vs. Sandy City	bonuses paid to Sandy City's police and fire department personnel.	
05-04	Schwarz vs. University of Utah	Any records on Barbara Schwarz or Schwartz, Mark C. Rathbun, Mark de Rothschild, Scientology, Church of Scientology, L. Ron Hubbard, and Dwight David Eisenhower.	Appeal Denied

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Appendix F

Cases

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Utah.
DEPARTMENT OF HUMAN SERVICES, DIVISION OF MENTAL HEALTH, Plaintiff and Appellee,
v.
Barbara SCHWARZ and Utah State Records Committee, Defendants and Appellant.
No. 20030324-CA.

Nov. 28, 2003.

Third District, Salt Lake Department; The Honorable J. Dennis Frederick.

Barbara Schwarz, Salt Lake City, Appellant Pro Se.

Mark L. Shurtleff and Joel A. Ferre, Salt Lake City, for Appellee.

Before Judges DAVIS, GREENWOOD, and THORNE.

MEMORANDUM DECISION (Not For Official Publication)

PER CURIAM:

***1** Barbara Schwarz appeals the district court's ruling that the Department of Human Services, Division of Mental Health (Division) was not required to disclose the name of a person providing a referral to the Division pertaining to Schwarz.

Schwarz made a request under the Utah Government Records Access and Management Act (GRAMA), Utah Code Ann. §§ 63-2-101 to -909 (1997 & Supp.2003), for all records pertaining to her that were in the possession of the Division. The Division provided an electronic mail message that referred Schwarz's name to the Division for mental health services, but it redacted the author's name pursuant to a policy to ensure the anonymity of persons making referrals. The Executive Director of the Department of Human Services affirmed the decision. On appeal, the Utah State Records Committee (Records Committee) agreed that the Division properly classified the name of a referent as a "private" or "controlled" record; however, it ordered disclosure of the name because "the public interest favoring access outweighs the interest favoring restriction of access." *See* Utah Code Ann. § 63-2-403(11)(b) (Supp.2003) (allowing disclosure of records classified as private, protected, or controlled if Records Committee determines "public interests favoring access outweighs the interest favoring restriction of access"). The Division petitioned for judicial review in district court. *See* Utah Code Ann. § 63-46b-15 (1997) (allowing district court de novo review of final agency actions resulting from informal adjudicative proceedings).

Utah Code Ann. § 63-2-404(8)(a) (1997) states that "[t]he court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the interest favoring access outweighs the interest favoring restriction of access." The district court vacated the Record Committee's order requiring the Division to disclose the referent's name, after finding that "the interests favoring access are outweighed by the interests favoring restriction of access to the referent's name." The court specifically found "that interests such as guarding against the invasion of personal privacy, protecting the safety of private individuals, and promoting candid referrals for public assistance favor restriction of access to the referent's name."

The issue before this court is whether the district court correctly ruled that the interests favoring access to the referent's name are outweighed by the interests favoring restriction of access. The Division contends that

because Schwarz has failed to analyze or adequately brief the issue, we should not address her arguments. *See* *Water & Energy Sys. Tech., Inc. v. Kell,* 2002 UT 32, ¶ 13, n. 2, 48 P.3d 888. We agree. Schwarz's briefs fail to properly address or analyze the issue before this court. The briefs contain no citations to the record in this case, and no analysis of relevant statutory or case law.

***2** Although the Division also briefed the merits of the appeal, neither an opposing party, nor the appellate courts, are obligated to address deficiencies in an appellant's briefing. *See* *Smith v. Smith,* 1999 UT App 370,¶ 8, 995 P.2d 14 ("An issue is inadequately briefed when the overall analysis is so lacking as to shift the burden of research and analysis to the reviewing court."). Accordingly, briefs must include citations to the relevant portions of the record, demonstrate that issues raised on appeal were preserved, marshal the evidence supporting any disputed factual finding, and cite and analyze relevant law. *See* Utah R.App. P. 24(a)(9). If an appellant fails to adequately brief the issues, the appellate court may decline to consider the argument. *See* *Phillips v. Hatfield,* 904 P.2d 1108, 1110 (Utah Ct.App.1995); *Koulis v. Standard Oil Co.,* 746 P.2d 1182, 1185 (Utah Ct.App.1987). In addition, rule 24(j) of the Utah Rules of Appellate Procedure requires that "[a]ll briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings, and free from burdensome, irrelevant, immaterial, or scandalous matters." Non-complying briefs can be stricken or disregarded. *See* Utah R.App. P. 24(j). Schwarz's briefs contain material that may be stricken or disregarded by this court.

Schwarz requests this court to consider that she is a pro se litigant without the resources available to the Appellee in this case. However, Schwarz has frequently appeared in the district and appellate courts in this state and may be held to the standard appropriate to her experience. Since 1990, Schwarz has filed no fewer than fifteen pro se appeals in this court or the Utah Supreme Court, as well as three petitions for writ of certiorari. We also note that this appeal results from a civil proceeding initiated by Schwarz. "When an individual avails herself of the judicial machinery as a matter of routine, special leniency on the basis of pro se status is manifestly inappropriate." *Lundahl v. Quinn,* 2003 UT 11,¶ 4, 67 P.3d 1000. Accordingly, Schwarz may "be charged with full knowledge and understanding of all relevant statutes, rules, and case law." *Id.* at ¶ 5.

Based upon the failure to adequately brief the issue before the court, we decline to address Schwarz's arguments on appeal and affirm the district court's judgment.

2003 WL 22827634 (Utah App.), 2003 UT App 406

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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Utah.
James C. GODFREY, Petitioner and Appellant,
v.
STATE of Utah, et al., Respondents and Appellees.
No. 20020382-CA.

June 12, 2003.

Second District, Ogden Department, The Honorable Ernest W. Jones.

James C. Godfrey, Gunnison, Appellant Pro Se.

Mark L. Shurtleff, Brent A. Burnett, J. Frederic Voros Jr., and Allan L. Larson, Salt Lake City, and David C. Wilson, Ogden, for Appellees.

Before Judges JACKSON, BILLINGS, and GREENWOOD.

MEMORANDUM DECISION (Not For Official Publication)

JACKSON, Presiding Judge:

***1** Godfrey challenges the trial court's dismissal of his complaints against the State of Utah, Ogden City, and Weber County. "We ... review the trial court's grant of a motion to dismiss ... for correctness." *Patterson v. American Fork City,* 2003 UT 7,¶ 9, 67 P.3d 466. We conclude that the trial court lacked jurisdiction to hear Godfrey's complaint against the State and affirm its dismissal of the other two complaints.

I. Claims Against State

Godfrey attempted to serve the State Records Committee (Committee) by serving the Utah Attorney General. This service was fatally defective and did not confer jurisdiction on the trial court. Utah's rule concerning service of process on a state committee states that service "[u]pon a department or agency of the state of Utah, or upon any public board, commission or body, subject to suit" is effectuated by "delivering a copy of the summons and the complaint to any member of its governing board, or to its executive employee or secretary." Utah R. Civ. P. 4(d)(1)(K).

Godfrey failed to serve a member of the Committee's governing board, its executive employee, or its secretary. Instead, he sought to serve the Committee by serving the Utah Attorney General. In the absence of effective service of process, the trial court was without jurisdiction to hear Godfrey's complaint against the State. *See Skanchy v. Calcados Ortope SA,* 952 P.2d 1071, 1074 (Utah 1998).

II. Claims Against Ogden City

The trial court did not err in dismissing Godfrey's complaint against Ogden City because Godfrey received all of the records to which he is entitled under the Government Records Access and Management Act (GRAMA). [FN1] Godfrey requested twenty-six items from Ogden City. Ogden provided fourteen of the items but denied his request for the remaining twelve items. We confine our analysis to whether Ogden City properly denied Godfrey's request as to the remaining twelve items.

FN1. GRAMA does not impose on any governmental entity a duty to provide access to all records it can conceivably obtain. *See State v. Spry,* 2001 UT App 75,¶ 16, 21 P.3d 675 ("Requiring the State to disclose to the defense all information to which it has 'access' under GRAMA 'would place a herculean burden on the prosecutor to search through [the] records of every state agency' looking for relevant written or recorded statements on behalf of the defendant simply because the State has access to the records under GRAMA." (Citation omitted.)).

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Ogden City denied Godfrey's requests 2 and 3 (wherein Godfrey requested "Detective Lucas's license plate search conducted at the police station and Detective Lucas's and Ms. Mindy Maughan's DMV license plate search") because these were manual searches done by the officer on a computer and later between the officer and Maughan and, therefore, no record existed to provide to Godfrey. Preliminary record searches are not records pursuant to Utah Code Ann. § 63-2-103(18)(b)(i) (1997), which excludes from the definition of records "temporary drafts or similar materials prepared for the originator's personal use."

Similarly, Ogden City denied Godfrey's requests 6, 7, and 8 (wherein Godfrey requested notes of interviews of the victims) because any notes potentially taken by Detective Lucas do not qualify as records under GRAMA. "Record does not mean: (i) temporary drafts or similar materials prepared for the originator's personal use or ... (vii) ... personal notes prepared ... for the originator's personal use...." *Id.*

***2** § 63-2-103(18)(b). Accordingly, Ogden City was not required to provide these documents to Godfrey under GRAMA.

Ogden City denied Godfrey's requests 4 and 5 (wherein Godfrey requested DMV records and license plate listings for Weber County) because they were not Ogden City records. To the extent that these records exist, they are State records. Similarly, Ogden City denied Godfrey's request 16 (wherein Godfrey requested a "Booking property report") because the record was made by Weber County and was not in Ogden City's possession. Finally, Ogden City denied Godfrey's requests 23 and 24 (wherein Godfrey requested trial exhibits) because the requests were given to the Weber County Attorney's Office and are not in the City's possession. No entity is required to go looking for records compiled by another agency or political subdivision. *See State v. Spry,* 2001 UT App 75,¶ 16, 21 P.3d 675 (refusing to require State to turn over all documents that might be helpful to defendant solely because it has "potential access"). Thus, Ogden City properly denied Godfrey's request for these documents.

Ogden City properly denied Godfrey's request 12 (wherein Godfrey requested Detective Lucas's sample exhibit given to the Weber County Attorney's Office of how the Utah State database worked). Ogden City no longer possessed the exhibit and was "not required to create a record in response to [Godfrey's] request." Utah Code Ann. § 63-2-201(8)(a) (1997). Therefore, Ogden City properly denied Godfrey's request for this document.

Ogden City also denied Godfrey's request 17 (requesting the "misdemeanor police report") because it was a South Ogden Police report. Utah Code Ann. § 63-2-701 (1997) allows political subdivisions to adopt ordinances "relating to information practices, including classification, designation, access, denials, ... management, retention, and amendment of records." An Ogden ordinance provides that

When a record is temporarily held by a custodial City agency, pursuant to that custodial agency's statutory or ordinance functions .... [t]he record shall be considered a record of the agency or agencies which usually keeps or maintains that record, and any requests for access to such records shall be directed to that agency or agencies, rather than the custodial agency.

Ogden, UT, Code § 4-5-3(C) (2003). Accordingly, Godfrey was required to submit his request for this document to the City of South Ogden.

The trial court correctly dismissed Godfrey's complaint against Ogden City because the City provided Godfrey all of the records to which he was entitled under GRAMA.

III. Claims Against Weber County

The trial court did not err in dismissing Godfrey's GRAMA complaint against Weber County because Godfrey did not present Weber County with an adequate GRAMA request. Specifically, paragraph 12 of Godfrey's complaint

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> states: "On April 12, Twenty-Six (26) items were requested from the District Attorney; (ATTACHMENT 2) 2nd District Court of Utah, Clerk of the Court, Public Defender Office; Ogden City Police Department-Chief of Police. No response was timely." However, Godfrey's "Attachment 2" contained no April 12, 2001 GRAMA request to Weber County. The only letter dated April 12, 2001 was addressed to the Ogden City Police Department.

***3** The only correspondence that Godfrey made part of the record is a July 6, 2001 letter to the District Attorney's office regarding: "GRAMA Appeal Request, case no 951900679." The letter states:

> [O]n June 4th, 2001, a GRAMA request was mailed and would have been received on June 7th, 2001. This is a third request and/or appeal. On June 28th, 2001, Ogden City claimed ITEMS 9 thru [sic] 11, 13, 18 thru [sic] 22, 25, and 26 are within your control. Please refer to enclosed *ATTACHMENT 1* and *ATTACHMENT 2*.

However, there were no such attachments to the letter or the complaint. These documents demonstrate that Weber County did not receive appropriate notice of Godfrey's GRAMA requests. Thus, any judicial proceeding requiring Weber County to produce the documents was premature. *See* Utah Code Ann. § 63-2-204(1) (1997) ("A person making a request for a record shall furnish the governmental entity with a written request containing ... a description of the records requested that identifies the record with reasonable specificity."). Accordingly, the trial court was correct in granting Weber County's motion to dismiss.

IV. Conclusion

The trial court did not err in dismissing Godfrey's complaints against the State, Ogden City, and Weber County because (1) it lacked jurisdiction to hear Godfrey's complaint against the State; (2) Ogden City provided Godfrey all the records to which he was entitled under GRAMA; and (3) Weber County did not receive adequate notice of Godfrey's GRAMA request. Because the trial court did not err in dismissing Godfrey's complaints against the State, Ogden City, and Weber County, we do not reach Godfrey's damage claims. Accordingly, we affirm.

NORMAN H. JACKSON, Presiding Judge.

WE CONCUR: JUDITH M. BILLINGS, Associate Presiding Judge and PAMELA T. GREENWOOD, Judge.

2003 WL 21356404 (Utah App.), 2003 UT App 195

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Editor's Note: Additions are indicated by
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Supreme Court of Utah.

STATE of Utah, Plaintiff and Appellee,
v.
Gino MAESTAS, Defendant and Appellant.

No. 20000094.

Dec. 20, 2002.

Mark L. Shurtleff, Att'y Gen., Kenneth A. Bronston, Asst. Att'y Gen., Salt Lake City, for plaintiff.

Scott C. Williams, Joan C. Watt, Salt Lake City, for defendant.

DURHAM, Chief Justice:

¶ 1 We granted Gino Maestas's petitions for interlocutory appeal from two pre-trial orders. The first order denied Maestas's motion to present expert testimony concerning eyewitness identification. The second concerned a previous trial on the same charges in which Maestas had been convicted of aggravated robbery, but his convictions were reversed on appeal. The district court granted the state's motion to introduce in the second trial Maestas's statements from his presentence report and his allocution from the first trial.

¶ 2 The following opinion is divided. As to the admission of expert testimony, a majority of the court--Associate Chief Justice Durrant with Justice Wilkins concurring and Justice Russon with Justice Howe concurring--holds that the trial court did not abuse its discretion in denying defendant's motion for the admission of expert testimony. Chief Justice Durham dissents.

¶ 3 As to the admission of defendant's inculpatory statements from his first trial, a majority of the court holds that such statements are inadmissible, and therefore reverses the trial court's ruling. There is unanimous agreement on the inadmissibility of the defendant's inculpatory statements contained in his presentence report. Regarding the inadmissibility of the defendant's allocution statement, Justice Russon and Justice Howe concur with Chief Justice Durham that it is inadmissible, but for different reasons. Associate Chief Justice Durrant and Justice Wilkins dissent as to the inadmissibility of the allocution statement.

BACKGROUND

¶ 4 On the evening of February 20, 1995, two robberies were reported near downtown Salt Lake City. [FN1] The first occurred at a Top Stop convenience store shortly after 8:00 p.m. The robber, dressed in a two-tone blue jacket and wearing a dark mask covering the lower part of his face, confronted a store clerk with a gun and demanded money. The robber took between thirty and forty dollars from the cash register and six dollars from the clerk's wallet. The store clerk reported that the robber jogged to a car parked approximately one block away. The clerk was unsure about his description of the car due to the rainy weather conditions and poor lighting, but thought it was a gold-colored, mid-1980's model Camaro.

¶ 5 Sometime between eight-thirty and nine on the same evening, a similarly- dressed person entered a Pizza Hut and robbed several persons. The robber took between $160 and $170 from the cash register, including approximately $10 in change, $15 to $20 from one employee, $6 from another employee, a day-planner pouch containing $15 in bills and change from one of the customers, and several crumpled dollar bills from another customer. The robber demanded that two other employees surrender their wedding rings, but they refused to do so. None of the victims of the robbery saw how the robber left the area, but a witness outside the Pizza Hut informed police that someone had driven from the parking lot in a blue 1977 or 1978 Camaro. [FN2]

¶ 6 At approximately nine p.m., an officer investigating the Pizza Hut robbery noticed Gino Maestas's (Maestas) blue 1978 Camaro parked in the driveway of an apartment building approximately three-and-a-half blocks from the Pizza Hut. The officer discovered the car's hood was still warm and that it contained a blue and green jacket and a few crumpled dollar bills. Watching from across the street, the officer observed Maestas and a friend, Mary Sisneros (Sisneros), come out of the apartment building and drive away in the Camaro. Shortly thereafter, police converged on the Camaro and arrested Maestas.

¶ 7 At trial, Maestas testified in his own defense. He asserted he had not committed the robberies, maintaining he had been at a family party at Sisneros's residence from about 5:30 p.m. until the time he and Sisneros attempted to go to a store but were stopped by the police. Although the robber wore a hat and mask

over his mouth and nose, several witnesses positively identified Maestas at trial. Defense counsel did not request that the trial court give a cautionary instruction concerning the reliability of eyewitness identification testimony.

¶ 8 The jury convicted Maestas of eight counts of aggravated burglary. Prior to sentencing, as part of the presentence investigation, Maestas handwrote a "Statement of the Offense" for an Adult Probation and Parole (AP & P) investigator. In his statement, Maestas admitted committing the robberies and provided several details not adduced at trial: he stated he committed the robberies to get money "to get high" and that he used a toy gun. Maestas's statements were included in the presentence investigation report (presentence report).

¶ 9 The sentencing matrix in the presentence report indicated a prison sentence of seven years for each of the eight counts. When asked by the sentencing judge if he had anything to say before sentence was pronounced, Maestas, unaware that he would successfully appeal his convictions and win a new trial based on ineffective assistance of counsel, took the court's invitation to explain something about who he is and how he came to be in his unhappy situation. Specifically, he talked about his involvement with drugs, and stated "I wasn't going to hurt anybody .... I would like some leniency from the court on that. [Fifty-six] years, that's my whole life in prison. I can be changed. I have showed that before." During the course of his statement, Maestas said that he committed the robberies and that he felt remorse for the victims.

¶ 10 The court then sentenced Maestas to five years to life for each of the eight counts of aggravated robbery, and added a firearm enhancement of one year to each count. In addition, the court ruled that count I, arising from the Top Stop robbery, and count II, arising from the robbery of one of the individuals at Pizza Hut, would run consecutively. The remaining six counts, all arising from the Pizza Hut robberies, would run concurrently with counts I and II.

¶ 11 On appeal, we reversed Maestas's convictions, holding that he had received ineffective assistance of counsel at his trial. *Maestas I,* 1999 UT 32 at ¶¶ 32-37, 984 P.2d 376. Specifically, we held that "trial counsel's failure to request a cautionary eyewitness instruction ... [had] prejudiced Maestas." *Id.* at ¶ 37, 984 P.2d 376.

¶ 12 On remand to the district court for retrial, Maestas moved to suppress the eyewitness identifications provided by seven witnesses to the robberies. The court heard testimony from six of the seven witnesses and reviewed the testimony of all the witnesses in the transcripts of the first trial. With respect to three of the witnesses, the court granted Maestas's motion, concluding that the positive identifications provided by those witnesses were not sufficiently reliable. The court denied the motion as to the four remaining witnesses.

¶ 13 Maestas and the state also submitted a number of pre-trial motions to admit evidence. Specifically, Maestas moved to allow expert testimony relative to eyewitness identification and moved to suppress the inculpatory statements he made prior to sentencing in the first trial. The state moved to admit the statements. The court denied Maestas's motion to present expert testimony regarding the reliability of the eyewitness identifications, ruling that a jury instruction could sufficiently inform the jury of "concerns about and factors affecting accuracy of eyewitness identification." The court further concluded that "allowing an expert to testify on the unreliability of eyewitness testimony would have a significant tendency to cause the jury to abdicate its role as a fact finder."

¶ 14 With respect to inculpatory statements from the sentencing phase of his first trial, Maestas argued that admission of those statements on retrial would compromise his rights to allocution and appeal, would violate his Fifth Amendment right against self-incrimination, and would violate rule 24(d) of the Utah Rules of Criminal Procedure. The trial court rejected Maestas's arguments and ruled that his inculpatory statements were admissible on retrial in the prosecution's case-in-chief.

¶ 15 Maestas petitioned this court for permission to appeal both the order denying permission to present expert testimony and the order admitting his inculpatory statements from the presentence report and the sentencing hearing. The state concurred in this petition, and we granted Maestas permission to appeal both interlocutory orders.

ANALYSIS

¶ 16 We first note the scope of our review on interlocutory appeal. *See* Utah R.App. P. 5(e). We agreed to review the court's denial of Maestas's motion to admit expert testimony and the court's grant of the state's motion to admit evidence of Maestas's statements to AP & P and to the trial court at the time of sentencing. We do not address the court's decisions relating to the admissibility of specific witnesses' identifications of Maestas.

[Editor: Part I of opinion removed since no GRAMA issues are discussed]

. . . .

II. ADMISSION OF MAESTAS'S INCULPATORY STATEMENTS FROM THE SENTENCING PHASE OF HIS FIRST TRIAL

¶ 25 Maestas next challenges the trial court's order allowing the prosecution to admit inculpatory statements he made following his first trial in his presentence report and at the sentencing hearing. We address first the admissibility of Maestas's statements in his presentence report, concluding that the provisions of the Utah Code governing the release of presentence reports preclude disclosure of Maestas's statements contained within the report. We then address the admissibility of Maestas's statement at the sentencing hearing, concluding that the statement is inadmissible.

A. Admissibility of the Presentence Report

¶ 26 After being convicted of the robberies at his first trial, Maestas hand- wrote his version of the robberies on a "Statement of the Offense" form, which was then included as part of the presentence report. In his statement, Maestas admitted <<-to->> robbing the "restaurant" and "gas station."

¶ 27 After Maestas was granted a new trial in *Maestas I,* the prosecution sought to admit his statements from his presentence report during the new trial. Because the trial court concluded that "nothing in the record suggest [ed] that defendant's written statement ... was not voluntary," the trial court ruled that the prosecution could admit the incriminating statements from this report as part of its case-in-chief.

¶ 28 Maestas appeals this ruling, raising several constitutional and statutory claims. In particular, Maestas contends that admission of the statements from his presentence report would violate (1) his Fifth Amendment privilege against self-incrimination; (2) his right to allocute and appeal; (3) subsection 77-18-1(5)(d) (1999) [FN3] of the Utah Code, which Maestas claims makes presentence reports unavailable for purposes other than sentencing; and (4) subsection 4-202.02(6)(C) of the Utah Rules of Judicial Administration, which requires that presentence reports be treated as controlled judicial records. Because we conclude that section 77-18-1 and related statutes preclude admission of the presentence report, we focus exclusively on this aspect of Maestas's argument.

¶ 29 Section 77-18-1 delineates, inter alia, the preparation and disclosure requirements for presentence reports. Subsection 77-18-1(5) deals specifically with the Department of Corrections's responsibilities in preparing the report:

> (5) (a) Prior to the imposition of sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of the sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the [D]epartment [of Corrections] ....
> (b) The presentence investigation report shall include a victim impact statement ....
> (c) The presentence investigation report shall include a specific statement of pecuniary damages ....
> (d) The contents of the presentence investigation report ... are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

Utah Code Ann. § 77-18-1(5) (Supp.2001). Maestas relies on subsection 77- 18-1(5)(d) to argue that his presentence report is "available for purposes of sentencing" only and thus inadmissible in the prosecution's case-in-chief.

[1] ¶ 30 As discussed below, Maestas overlooks the fact that the disclosure limitations specified in section 77-18-1(5)(d) are replaced by less stringent limitations once a presentence report has been completed and reviewed for accuracy. Subsection 77-18-1(5), as we have noted, deals with the *preparation* of the report. The fact that subsection (5)(d)'s strict disclosure limitation falls within a subsection focusing exclusively on the report's preparation indicates that the legislature intended that the limitation apply only to the preparation phase of the report.

¶ 31 Strict access control during the report's preparation apparently arose out of the legislature's concerns over releasing possibly inaccurate information. During the preparation phase, the parties have not had an opportunity to challenge the report's accuracy. This opportunity comes once the Department of Corrections completes its preparation of the report, as shown in subsection 77-18-1(6):

> (6) (a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional ten working days to resolve the alleged inaccuracies of the report with the department. If after ten working days the inaccuracies cannot be resolved, the court shall make a determination of the relevance and accuracy on the record.
> (b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

Utah Code Ann. § 77-18-1(6) (Supp.2001).

[2] ¶ 32 After completion of the review detailed in subsection 77-18-1(6), the information in a presentence report is presumptively accurate. The report is then used to inform the court's decision regarding the proper sentence.

[3] ¶ 33 Subsection 77-18-1(14) then addresses the disclosure limitations on the completed and presumptively accurate reports. Significantly, despite classifying the reports as "protected" under the Government Records Access and Management Act, subsection 77-18-1(14) lists five conditions under which the report may be disclosed for purposes other than sentencing:

> (14) Presentence investigation reports, including presentence diagnostic evaluations, are classified protected in accordance with Title 63, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63-2-403 and 63-2-404, the State Records Committee may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the [D]epartment [of Corrections] may disclose the presentence investigation only when:
> (a) *ordered by the court pursuant to Subsection 63-2-202(7);*
> (b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;
> (c) requested by the Board of Pardons and Parole;
> (d) requested by the subject of the presentence investigation report or subject's authorized representative; or
> (e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or material provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.

Id. § 77-18-1(14) (emphasis added).

¶ 34 Of particular relevance to the trial court's order in this case is subsection 77-18-1(14)(a), which provides that the Department of Corrections may disclose presentencing reports "when ordered by the court pursuant to Subsection 63-2-202(7)." *Id.* Based on subsection 77-18-1(14)(a), Maestas's presentence report is subject to court-ordered disclosure if the order complies with subsection 63-2-202(7).

¶ 35 We thus turn to subsection 63-2-202(7) to determine whether the trial court properly ordered disclosure of Maestas's presentence report for use in the prosecution's case-in-chief. Subsection 63-2-202(7) of the Utah Code falls within a statute entitled, "Access to private, controlled, and protected records." Utah Code Ann. § 63-2-202 (Supp.2001). Subsection 63-2-202(7) deals specifically with the conditions governing access to such records based on a "court order signed by a judge from a court of competent jurisdiction." *Id.* § 63-2-202(7).

¶ 36 By its terms, subsection 63-2-202(7) places several conditions on court- ordered disclosure of presentence reports:

> (7) A government entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:
> (a) the record deals with a matter in controversy over which the court has jurisdiction;
> (b) the court has considered the merits of the request for access to the record; and
> (c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect ... privacy interests or the public interest in the case of other protected records;
> (d) to the extent that the record is properly classified ... protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and
> (e) where access isrestricted by ... statute ... referred to in Subsection 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

Id. § 63-2-202(7).

¶ 37 Since the trial court apparently was not made aware of subsection 78-1- 18(15) or its reference to subsection 63-2-202(7), the court reached no conclusion with respect to subsection 63-2-202(7)'s conditions regarding court- ordered disclosure. In addition, neither Maestas nor the state advances any arguments with respect to these conditions.

¶ 38 Based on our analysis, we conclude that, as a matter of law, disclosure of the report does not satisfy the requirements of subsection 63-2-202(7). Specifically, the circumstances in this case meet only three of the five conditions enumerated in subsection 63-2-202(7):

> (1) Maestas's admissions concerning the robberies in his presentence report "deal[ ] with a matter in controversy over which the [trial] court has jurisdiction." *Id.* § 63-2-202(7)(a);
> (2) by granting the state's request for disclosure, the court apparently "considered the merits of the request for access to" Maestas's statements in the report. *Id.* § 63-2-202(7)(b); and
> (3) although "access to [the report] is restricted by a ... statute [i.e., section 77-18-1]," subsection 77-18-15(a) allows for disclosure by court order and gives courts "authority independent of ... chapter [2] to order disclosure." *Id.* § 63-2-202(7)(e).

¶ 39 We are not satisfied, however, that the two remaining conditions specified by section 63-2-202 are

met. First, there is no evidence that the court "considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect ... privacy interests or the public interest." *Id.* § 63-2-202(7)(c). Indeed, rather than considering more limited uses of the report (e.g., disclosure only for impeachment purposes), the court ordered that the requester (i.e., the prosecution) could publicly disclose Maestas's statements during its case-in-chief.

[4] ¶ 40 Second, we conclude that even limited disclosure of the presentencing report is unwarranted. In particular, subsection 63-2-202(7)(d) requires that the interests favoring the permitted scope of access outweigh the interests favoring restriction of access before disclosure is ordered. We believe that the exclusion of the presentence report in the prosecution's case- in-chief is supported by the same concerns laid out hereafter in our analysis. Briefly, a defendant's statements repeated in a presentence report are functionally equivalent to his statements at sentencing in that they are both made pursuant to his right to petition the court for mercy. We conclude that any interest favoring access to the presentence report by the state are outweighed by Maestas's legislatively-recognized privacy interest in the records.

¶ 41 Under the circumstances, we hold that the interests favoring non- disclosure prevail. Accordingly, we reverse the trial court's order allowing the prosecution to admit in its case-in-chief Maestas's statements in his presentence report. Having determined that the Utah Code is dispositive of the issue, we need not reach Maestas's arguments under the federal or state constitution or the Utah Code of Judicial Administration.

[Editor: This section of the opinion is omitted since no GRAMA issues are discussed]

CONCLUSION

¶ 57 Again, we note that the opinion is divided. Regarding the admission of expert testimony, the majority of this court affirms the trial court's denial of Maestas's motion.

¶ 58 As to the second issue, regarding the district court's order permitting the state's introduction of Maestas's inculpatory statements from his presentence report and his allocution during the sentencing phase of his first trial, the majority of this court reverses the district court's order. Neither the presentence report nor statements from the allocution are admissible for use by the state in its case-in-chief.

¶ 59 We remand for proceedings consistent with this opinion.

DURRANT, Associate Chief Justice, dissenting in part and concurring in part:

¶ 60 I respectfully dissent as to parts I and II.B of Chief Justice Durham's lead opinion.

. . . .

[Justice Durrant's opinion omitted since no GRAMA issues are discussed]

¶ 133 Justice WILKINS concurs in Associate Chief Justice DURRANT's dissenting and concurring opinion.

RUSSON, Justice, dissenting in part and concurring in part:

¶ 134 I dissent as to part I of Chief Justice Durham's opinion, concur as to part II.A, and concur as to part II.B but for a different reason.

[Justice Russon's opinion omitted since no GRAMA issues are discussed]

¶ 142 Justice HOWE concurs in Justice RUSSON's concurring and dissenting opinion.

FN1. We present an abbreviated version of the facts in this case. For a more detailed version, the reader is referred to our opinion in *State v. Maestas,* 1999 UT 32, ¶¶ 2-19, 984 P.2d 376 ("Maestas I").

FN2. Neither this witness, nor the officer with whom the witness spoke, testified. A backup officer testified that the officer had told him of the witness's description of the car. In addition, another officer testified that there had been a police broadcast that the suspect may be in a "1978 or late 1970s model" blue Camaro.

FN3. Although the robberies were allegedly committed in 1995, Maestas cites the 1999 version of section 77-18-1. Because the relevant portions of the current versions of section 77-18-1 and 63-2-202 are substantially identical to the versions in effect at the time of the alleged robberies, we cite the most current official code supplement. In this regard, we note that prior to the deletion in 2001 of a subsection dealing with restitution, a topic irrelevant to our analysis, subsection 77-18-1(14), which we later cite in this opinion, was formerly subsection 77-18-1(15). *See* H.B. 26, 54th Leg., Gen. Sess., 2001 Utah Laws 699-702; *compare* Utah Code Ann. § 77-18-1(14) (Supp.2001), with Utah Code Ann. § 77-18-1(15) (1994).

[Editor: Remainder of footnotes deleted since no GRAMA issues are addressed]

END OF DOCUMENT

Supreme Court of Utah.

Brent D. YOUNG, Plaintiff and Appellee,
v.
SALT LAKE COUNTY and Aaron D. Kennard, Salt Lake County Sheriff, Defendants and Appellants.

Nos. 20010101, 20010294.

July 23, 2002.

Valerie Wilde, David E. Yocom, Salt Lake City, for defendants.

Blake Nakamura, Salt Lake City, for plaintiff.

WILKINS, Justice:

¶ 1 Salt Lake County ("County") appeals the district court's grant of summary judgment in favor of Brent D. Young ("Young") requiring the County to disclose disciplinary records and investigative files. We affirm in part and reverse in part.

BACKGROUND

¶ 2 Young was employed by the Salt Lake County Sheriff's Department ("Sheriff's Department") as a deputy sheriff. Young's employment was terminated on January 14, 2000, allegedly for an incident involving use of his firearm and sexual innuendo. Young appealed his termination to the Sheriff's Department Merit Commission. In preparation for the appeal, Young requested that the County provide him with, among other records, copies of disciplinary records of other deputies who had been investigated and/or disciplined for similar conduct.

*1242 ¶ 3 The County denied Young's request for records. Pursuant to statute and the County's instructions, Young appealed this denial to the Salt Lake County Sheriff on March 28, 2000. On April 20, 2000, the Sheriff denied Young's appeal. On May 16, 2000, Young filed a complaint with the third district court seeking judicial review of the Sheriff's denial of his appeal. The parties filed cross-motions for summary judgment. On November 1, 2000, the district court entered an order granting Young's motion for summary judgment, concluding that (1) Young's request for judicial review was timely, (2) Young had a due process right in the requested information, and (3) Young's right to the information was not outweighed by the privacy interests of third parties. In so doing, it ordered the County to disclose "the disciplinary records and investigative files of any sworn member of the Salt Lake County Sheriff's Department where the conduct investigated concerned the inappropriate use or handling of a firearm or inappropriate sexual conduct, both verbal or physical," and allowed the County to make appropriate redactions in the records to prevent the disclosure of the parties' identities. The County filed a notice of appeal on November 13, 2000.

¶ 4 Shortly thereafter, the County voluntarily withdrew its appeal to pursue the resolution of an attorney fees issue with the district court. The district court ultimately decided the attorney fee issue in favor of the County and entered an amended final order on March 9, 2001, which the County appealed to this court on March 13, 2001. Young filed a motion for summary disposition with this court, arguing that the County's appeal was untimely, rendering the court without jurisdiction to hear the appeal. [FN1]

FN1. We deferred ruling on Young's motion for summary disposition and now deny the motion. Young's motion is based on confusion caused by his sending a document titled "Notice of Claim for Attorney Fees" to the County. This claim was stylized as a pleading, *see* Utah R. Civ. P. 10, was served on the County, and resulted in the County's voluntary dismissal of its appeal. More importantly, both parties sought action by the district court on the issues related to the claim for attorney fees and the district court acted on those requests. As such, we see no abuse of discretion in the district court's decision to adjudicate the issue of attorney fees. The County has timely appealed the district court's amended ruling within the thirty-day time period mandated by Utah Rule of Appellate Procedure 4(a).

ISSUES PRESENTED & STANDARD OF REVIEW

[1] ¶ 5 The County's challenge to the district court's grant of summary judgment is founded on two primary issues: (1) whether Young's petition for judicial review of the Sheriff's decision was timely filed with the district court and (2) whether the district court was within its authority to order that the requested records be released. Young additionally argues that he should be awarded attorney fees for defending this appeal. We review the district court's grant of summary judgment for correctness, *e.g., Sur. Underwriters v. E & C Trucking, Inc.,* 2000 UT 71, ¶ 14, 10 P.3d 338, and address each issue in turn.

ANALYSIS

I. TIMELINESS OF YOUNG'S PETITION FOR JUDICIAL REVIEW

¶ 6 Sections 63-2-401 through -405 of the Utah Code govern the appeals process for records requests under the Government Records Access and Management Act ("GRAMA"). Under the GRAMA statutory scheme, prior to seeking judicial review of a governmental entity's decision regarding records access, a requester must first file a notice of appeal with the chief administrative officer of the governmental entity. Utah Code Ann. § 63-2- 401(1)(a) (1997). In cases such as Young's, the chief administrative officer has five days to make a determination on the appeal. § 63-2-401(5)(a). Failure to make a determination within five days "shall be considered the equivalent of an order denying the appeal." § 63-2-401(5)(b). Once the chief administrative officer has denied an appeal, the requester may appeal the denial to the records committee or petition a district court for judicial review. § 63-2-402(1). If the requester chooses to pursue judicial review, he or she must comply with section 63-2-404, which establishes the parameters *1243 under which a district court may review a governmental entity's decision to release or not release records. Of particular relevance here, section 63-2-404(2)(b) states that

> [t]he requester shall file a petition no later than:
> (i) 30 days after the governmental entity has responded to the records request by either providing the requested records or denying the request in whole or in part;
> (ii) 35 days after the original request if the governmental entity failed to respond to the request; or
> (iii) 45 days after the original request for records if:
> (A) the circumstances described in Subsection 63-2-401(1)(b) occur; and
> (B) the chief administrative officer failed to make a determination under Section 63-2-401.

§ 63-2-404(2)(b).

¶ 7 Pursuant to GRAMA, Young appealed the denial of his records request to the chief administrative officer of the Salt Lake County Sheriff's Department, the Salt Lake County Sheriff, on March 28, 2000. The Sheriff denied Young's appeal in a letter dated April 20, 2000, and on May 16, 2000, Young filed a complaint seeking review by the district court of the Sheriff's denial.

¶ 8 The County argues that Young's petition for judicial review was not timely filed with the district court, rendering that court without jurisdiction to adjudicate the GRAMA issue. Specifically, the County points out that the Sheriff did not respond to Young's March 28, 2000, request within the five-day time period it argues is required under section 63-2-401(5)(a)(i). Thus, the County asserts, Young's request was deemed denied under section 63-2-401(5)(b), and, pursuant to section 63-2-404(2)(b)(ii), Young had thirty- five days from the date of his March 28, 2000, request to petition the district court for review. The County would therefore have us hold that Young's petition, filed on May 16, 2000--more than thirty-five days after the March 28 request--was untimely. We do not agree with the County's reading of GRAMA.

[2] ¶ 9 Whether or not Young's appeal for review by the Sheriff was deemed denied by virtue of the Sheriff's failure to respond within five days is irrelevant in this particular case. The fact that the Sheriff did respond to Young's request enabled Young to file a petition for judicial review within thirty days from that response. *See* § 63-2-404(2)(b)(i). We so hold based on our reading of the plain language of section 63-2-404(2)(b) which, by including the word "or" between the three alternative time periods for filing, clearly allows any of the three alternatives to govern if applicable in a particular case.

¶ 10 Our reasoning here is similar to that in *Harper Investments, Inc. v. Auditing Division, Utah State Tax Commission,* 868 P.2d 813 (1994). In *Harper Investments,* the Harper Companies sought judicial review of a Tax Commission decision under a statute allowing judicial review, provided the review was sought within thirty days of a final decision. *Id.* at 815; *see* § 63-46b-14(3)(a). Before seeking judicial review, however, the Harper Companies filed a petition for reconsideration pursuant to statute with the Tax Commission on May 4, 1992. *Harper Investments,* 868 P.2d at 815; *see* § 63- 46b-13(1)(a); *see also* § 63-46b-1(9). In spite of the fact that the relevant statute provided that petitions for reconsideration were "considered to be denied" if the Tax Commission did not respond within twenty days, *see* § 63-46b- 13(3)(b), the Tax Commission denied the petition on June 3, 1992, more than twenty days later. *Harper Investments,* 868 P.2d at 815. The Harper Companies sought judicial review on July 1, 1992. *Id.* The Tax Commission argued that "the thirty-day period for seeking judicial review began to run on May 25, 1992, twenty days from the day on which the Harper Companies petitioned for reconsideration." *Id.* In holding that the Harper Companies' petition was timely, we explained:

> When the Harper Companies chose not to file their petition for review within the twenty-day period, they assumed the risk that there would be no order from the Commission. They would have missed the deadline if the Commission had never issued *1244 its final decision of June 3, 1992. However, because the Commission chose to consider the petition for reconsideration and to act on it by issuing an order, the period for seeking review did not begin to run until the date of that final opinion. As a result, once

the order was issued, the Harper Companies had an additional thirty days to file, and they did so. *Id.* at 816.

¶ 11 Likewise, by not filing a petition for judicial review within the thirty- five-day period required by section 63-2-404(2)(b)(ii), Young assumed the risk that the Sheriff would not respond to his request. Had the Sheriff not responded, Young's request would have been deemed denied, § 63-2-401(5)(b), and Young would have had thirty-five days from the date of his original request to the Sheriff to file a petition. § 63-2-404(2)(b)(ii). Because, however, the Sheriff chose to respond to Young's request, [FN2] Young had thirty days from the date of the response to file a petition. § 63-2-404(2)(b)(i). Young's petition--filed within thirty days after the Sheriff's response--is therefore timely, and we conclude the district court had jurisdiction over the petition.

FN2. The County implicitly argues that section 63-2-401(5)(a)(i) bars the Sheriff from responding to GRAMA requests after five days and cites *Retherford v. Industrial Commission,* 739 P.2d 76 (Utah Ct.App.1987) in support of the proposition that the Sheriff may not change statutory jurisdictional requirements. Although this is a correct reading of *Retherford,* the Sheriff's response to Young's request after five days did not violate any statutory requirements. While it is true that section 63-2-401(5)(a)(i) requires the chief administrative officer to make a determination on a GRAMA appeal within five days where no claim of business confidentiality has been made, *see* § 63-2-401(5)(a), section 63-2-401(5)(c) authorizes the parties to extend the specified time periods by agreement. Although the parties have not argued this point, the Sheriff's choice to respond to Young's request outside of the five-day period and Young's choice to rely upon that response as the basis of his petition for judicial review shows an implicit agreement to extend the period. Consequently, we see no statutory bar to the Sheriff's response.

II. AUTHORITY OF DISTRICT COURT TO ORDER RELEASE OF RECORDS

[3] ¶ 12 The district court concluded that section 63-2-202(7)(e) of the Utah Code gave it authority to order the disclosure of the disputed records. The County attacks this conclusion, arguing that section 63-2- 202(7) gives a court such authority only when "the record [to which access has been denied] deals with a matter in controversy over which the court has jurisdiction," Utah Code Ann. § 63-2-202(7)(a) (1997), and that because the district court had no jurisdiction over the matter in controversy--Young's termination proceedings--the district court had no authority to order release of the records. While the district court correctly concluded that it had authority to order the disclosure of records, this authority derives from section 63-2-404, not section 63-2-202.

¶ 13 Section 63-2-202 specifies the parameters under which a governmental entity shall provide access to private, controlled, and protected documents. *See generally* § 63-2-202. Section 63-2-202(7) specifically authorizes a governmental entity to disclose records pursuant to a court order, provided the court order complies with specified parameters. *See* § 63-2-202(7)(a-e). Section 63-2-202(7) does not, however, specifically confer authority upon a court to order the disclosure of such records. This authority is conferred upon courts in section 63-2-404, which deals with judicial review of disclosure requests.

¶ 14 Under section 63-2-404, "[a] requester may petition for judicial review by the district court of a governmental entity's determination ...." § 63-2-404(2)(a). The only prerequisites to this review are that the petition must be timely filed, § 63-2-404(2)(b); *see infra* Part I, that the petition be in the form of a complaint, § 63-2-404(3), and that the proceedings be governed by the Utah Rules of Civil Procedure. § 63-2- 404(5). Section 63-2-404 authorizes the district court to review the governmental entity's decision de novo, § 63-2-404(7)(a), and decide the issue by considering and weighing the various interests and public policies for or against disclosure. § 63-2-404(8)(a). The district court may impose restrictions on the disclosure. § 63-2-404(8)(b).

*1245 ¶ 15 In this case, Young followed the proper appeals procedure established in sections 63-2-401 to 405 of GRAMA. Pursuant to section 63-2-401, Young appealed the County's determination to the Sheriff. After the Sheriff denied Young's request, Young exercised his option under section 63-2-402 to appeal this determination to a district court. Young then properly filed a petition with the district court pursuant to section 63-2-404, and the district court properly exercised the authority conferred upon it by section 63-2-404 to consider Young's petition.

[4] ¶ 16 Regardless of the district court's authority under GRAMA to review Young's petition, the County asserts that the district court failed to consider the effect of section 17-30-19 in ordering disclosure of records, and argues that this section prohibits the release of the unappealed disciplinary records of other deputies. Section 17-30-19 provides, in relevant part:

(1) Each person who orders the demotion, reduction in pay, suspension, or discharge of a merit system

officer for any cause set forth in Section 17- 30-18 shall:
(a) file written charges with the commission; and
(b) serve the officer with a copy of the written charges.
(2)(a)(i) An officer who is the subject of charges under Subsection (1) may, within ten days after service of the charges, appeal in writing to the commission.
(ii) In the absence of an appeal, *a copy of the charges under Subsection (1) may not be made public without the consent of the officer charged.*

§ 17-30-19(1), (2) (emphasis added).

¶ 17 Section 17-30-19 clearly states that charges, as narrowly defined in the statute, are not public records if the charges have not been appealed. § 17-30-19(2)(a)(ii). Young requested that the County disclose, among other things, "[a]ny records concerning any investigation of any member of the Salt Lake County Sheriff's Department that concerned an improper use or handling of a firearm or that concerned any sexually inappropriate behavior, both verbal or physical." The district court explicitly considered section 17-30-19 and held that, notwithstanding section 17-30-19, it had authority to order the disclosure of "disciplinary records and investigative files of any sworn member of the Salt Lake County Sheriff's Department where the conduct investigated concerned the inappropriate use or handling of a firearm or inappropriate sexual conduct, both verbal or physical." In arriving at this conclusion, the district court appears to have followed the proper procedure under GRAMA, which gives the district court authority to, "upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information ... if the interest favoring access outweighs the interest favoring restriction of access." § 63-2-404(8)(a). While the district court appears to have attempted to weigh the various interests and public policies relevant to Young's request in arriving at its conclusion, we disagree with its conclusion that disclosure of the requested records is appropriate to the extent the order requires disclosure of un-appealed charges under section 17-30-19.

¶ 18 In enacting section 17-30-19, the legislature made a policy determination that un-appealed charges are not to be made public "without the consent of the officer charged." § 17-30-19(2)(a)(ii). In light of this explicit legislative pronouncement, we do not see how any interests can outweigh this determination. In arriving at this conclusion, we note that GRAMA gives significant weight to state statutes in determining whether or not disclosure of a document is appropriate. *See* § 63-2-201(3)(b) (stating that records to which access is restricted pursuant to another state statute are not public records); *see also* § 63-2-301(2)(*o*) (stating that while information relating to formal charges or disciplinary action against governmental employees is normally of public record, access to such records may be restricted under section 63-2-201(3)(b)). Thus, to the extent the district court's order requires the release of un-appealed charges as narrowly defined in section 17-30-19, we reverse the district court and remand for an order consistent with this opinion. We affirm the district court's order otherwise.

*1246 III. ATTORNEY FEES

[5] ¶ 19 Young asks us to award attorney fees under Utah Rule of Appellate Procedure 33(a) for his defense of this appeal as the County's appeal is, according to Young, "frivolous." Specifically, Young asserts that the County's arguments are "contrary to the plain language of the statutes upon which they rely" and its interpretation of the relevant statutes is "contrary to the intent of the statutes [and is] therefore not warranted by existing law or based on a good faith argument to extend, modify[,] or reverse existing law." Young's argument is without merit. While we have not accepted all of the County's arguments, the County's appeal is not frivolous as it is based on a reasonable legal and factual basis. *See, e.g., O'Brien v. Rush,* 744 P.2d 306, 310 (Utah Ct.App.1987) (defining frivolous appeal as an appeal having no reasonable legal or factual basis).

CONCLUSION

¶ 20 Young's petition for judicial review of the Sheriff's denial of his records appeal was timely filed with the district court pursuant to section 63-2-404(2)(b)(i) of the Utah Code. The district court had authority to order the disclosure of the requested records under section 63-2-404, except to the extent that un-appealed charges as defined in section 17-30-19 would be disclosed. The County's appeal is not frivolous and we accordingly deny Young any attorney fees. We affirm in part, reverse in part, and remand to the district court to modify its order to preclude the disclosure of any un- appealed charges as narrowly defined in section 17-30-19.

¶ 21 Chief Justice DURHAM, Associate Chief Justice DURRANT, Justice HOWE, and Justice RUSSON concur in Justice WILKINS' opinion.

52 P.3d 1240, 452 Utah Adv. Rep. 66, 2002 UT 70

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Court of Appeals of Utah.

STATE of Utah, Plaintiff and Appellee,
v.
Sandra SPRY aka Sandra Chlopitsky, Defendant and Appellant.

No. 20000244-CA.

March 8, 2001.

*675 W. Andrew McCullough, Orem, for Appellant.

Mark L. Shurtleff, Atty. Gen., and Jeffrey T. Colemere, Asst. Atty. Gen., Salt Lake City, for Appellee.

Before Judges BILLINGS, DAVIS, and ORME.

OPINION

BILLINGS, Judge:

¶ 1 Sandra Spry, aka Sandra Chlopitsky (Defendant), having obtained our leave to *676 take an interlocutory appeal, appeals the trial court's order denying her motion to compel discovery and granting the State's motion for discovery. We affirm.

BACKGROUND

¶ 2 On August 5, 1999, at approximately 1:30 a.m., a police officer observed Defendant behaving suspiciously near an automated teller machine. The officer drove up to Defendant to investigate. Defendant approached the officer and began speaking to him. The officer could smell alcohol on Defendant's breath. Defendant denied drinking. The officer noticed an open alcoholic beverage container in Defendant's open convertible. Upon questioning, Defendant became angry and abusive, and refused to cooperate. She was placed under arrest. During an inventory search of the vehicle, the officer found a baggy containing a substance which tested positive as cocaine, and another which tested positive as methamphetamine. The officer also found scales, pipes, tubes, syringes, several small baggies, and additional containers of alcohol.

¶ 3 Defendant was charged with two counts of unlawful possession of a controlled substance, in violation of Utah Code Ann. § 58-37- 8(2)(a)(i) (Supp.1999), and one count of unlawful possession of drug paraphernalia, in violation of Utah Code Ann. § 58-37a-5 (1998).

¶ 4 Defendant's vehicle, after being impounded, was destroyed by fire. Believing she was "roughed up" and that her car was wrongfully destroyed, Defendant filed a written complaint against the arresting officer with the Internal Affairs Division of the City of South Salt Lake. A hearing was held on the complaint, which was tape recorded. After the hearing, Internal Affairs determined there was no cause for the complaint.

¶ 5 In the pretrial discovery stage of her prosecution, Defendant requested the internal affairs complaint and tape recording (collectively "internal affairs record") from the State pursuant to Rule 16(a)(1) of the Utah Rules of Criminal Procedure. The State denied this request. [FN1] Defendant then filed a motion to compel discovery of a copy of the internal affairs record.

FN1. Subsequently, Defendant, through her civil attorney, requested a copy of the internal affairs record from the City of South Salt Lake. This request was denied by the City, which cited to the Government Records Access and Management Act (GRAMA), Utah Code Ann. §§ 63-2-101 to - 909 (1997 & Supp.2000), specifically §§ 63-2-302 & -304 (1997 & Supp.2000). At oral argument, Defendant admitted that this decision was not appealed.

¶ 6 The State filed a motion for discovery, requesting the names and testimony of defense witnesses, copies of expert reports, exhibits and investigative reports that would be used at trial.

¶ 7 The trial court denied Defendant's motion to compel discovery and granted the State's motion for discovery, finding that the State had shown good cause. This court granted Defendant's petition for interlocutory appeal to review the trial court's orders denying her motion to compel discovery and granting the State's motion for discovery.

ISSUES AND STANDARD OF REVIEW

[1][2] ¶ 8 At issue are the interpretations of Rule 16(a)(1) and Rule 16(c) of the Utah Rules of Criminal Procedure. While a trial court is generally allowed broad discretion in granting or denying discovery, *see* State v. Knill, 656 P.2d 1026, 1027 (Utah 1982), "[t]he proper interpretation of a rule of procedure is a question of law, and we review the trial court's decision for correctness." *Ostler v. Buhler,* 1999 UT 99, ¶ 5, 989 P.2d 1073; *see also* *State v. Bybee,* 2000 UT 43,¶ 10, 1 P.3d 1087.

ANALYSIS

I. Access to Internal Affairs Record

¶ 9 Rule 16(a)(1) provides that, upon request, the prosecutor shall disclose to the defense "relevant written or recorded statements of the defendant or codefendants" of which he has knowledge. Utah R.Crim. P. 16(a)(1). Defendant argues that the internal affairs record is a relevant written or recorded statement of Defendant and as such must be disclosed by the State so Defendant can adequately prepare her defense. While the *677 internal affairs record may be a relevant written or recorded statement of Defendant, Rule 16(a)(1) requires that the prosecutor have "knowledge" of the internal affairs record before requiring disclosure of the same. *See id.* The State argues that it is not required to produce records when the prosecutor, staff, and investigating officers of Salt Lake County do not possess or have knowledge of the evidence contained therein.

¶ 10 In *State v. Pliego,* 1999 UT 8, 974 P.2d 279, the Utah Supreme Court addressed the issue of "whether [R]ule 16(a) requires a prosecutor to disclose to the defense records which he does not possess and of which he has no knowledge." *Id.* at ¶ 8. *Pliego* involved an appeal by a defendant from an order denying his motion to require the prosecution to obtain and produce the victim's mental and health records at the Adolescent Residential Treatment and Education Center (ARTEC), the Division of Family Services (DFS), and the Child Protective Services (CPS). *See id.* at ¶ 4.

¶ 11 The court held that Rule 16(a) did not require the prosecutor "to disclose or produce to the defense [the victim's] ARTEC, DFS, and CPS records." *Id.* at ¶ 14. The court stated, "[t]he record shows that neither the prosecutor, her staff, nor the investigating officers possessed or had knowledge of these materials or the evidence contained therein." *Id.*

¶ 12 What is more critical to our analysis, however, is the court's disapproval of one aspect of this court's decision in *State v. Mickelson,* 848 P.2d 677 (Utah Ct.App.1992), regarding the scope of the prosecution's discovery obligation. In *Pliego,* the defendant relied on *Mickelson* for the proposition that Rule 16(a) "requires the prosecutor to disclose [any] records in the possession of other state agencies." *Pliego,* 1999 UT 8 at ¶ 15, 974 P.2d 279 (alteration in original).

¶ 13 In *Mickelson,* we relied on several cases, including a decision of the United States Court of Appeals for the Third Circuit, *United States v. Perdomo,* 929 F.2d 967 (3rd Cir.1991), which held that the prosecution is required to disclose records that are "in the possession of some arm of the state." *Perdomo,* 929 F.2d at 971. *Pliego* expressly rejects this holding. *See Pliego,* 1999 UT 8 at ¶ 15, 974 P.2d 279.

¶ 14 In rejecting *Perdomo* the supreme court reasoned that,

> [i]n our view, [the *Perdomo*] requirement is too broad. Such a rule would place a herculean burden on the prosecutor to search through [the] records of every state agency looking for exculpatory evidence on behalf of the defendant ... [R]ule 16(a) of the Utah Rules of Criminal Procedure does not require as much. *Rather, the prosecutor's disclosure duty arises only when he, his staff, or the investigating officers come across exculpatory materials during their investigation.* Therefore, to the extent that *Mickelson* adopted the *Perdomo* rule, we decline to follow it.

Id. at ¶ 18 (emphasis added).

[3] ¶ 15 In the instant case, it is undisputed that the Internal Affairs Division of the City of South Salt Lake is in possession of the internal affairs record. There is no evidence in the record to suggest that the Salt Lake County District Attorney's Office had knowledge of the internal affairs record (other than being apprised of its existence in this appeal), or came across the same in the course of its investigation. Further, the State has stipulated that it will not use the internal affairs record in this prosecution.

[4] ¶ 16 However, Defendant argues that the State has access to the internal affairs record through section 63-2-206 of the Government Records Access and Management Act (GRAMA). [FN2] The State does not dispute that it has potential access to the internal affairs record under GRAMA, however, it does not follow that the State must disclose it to Defendant under Rule 16(a)(1). Requiring the State to disclose to the defense all information *678 to which it has "access" under GRAMA "would place a herculean burden on the prosecutor to search through [the] records of every state agency" looking for relevant written or recorded statements on behalf of the defendant simply because the State has access to the records under GRAMA. *Pliego,* 1999 UT 8 at ¶ 18, 974 P.2d 279. Such a result would violate the principles articulated by our supreme court in *Pliego.* We therefore affirm the trial court's denial of Defendant's motion to compel production of the internal affairs record. [FN3]

> FN2. This section, in relevant part, provides:
> (1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity ... if the requesting entity:
> ....
> (b) enforces, litigates, or investigates ... criminal ... law, and the record is necessary to a proceeding or investigation.

Utah Code Ann. § 63-2-206(1)(b) (Supp.2000).

FN3. Defendant's proper course of action should have been to use Rule 14(b) of the Utah Rules of Criminal Procedure to subpoena the internal affairs record from the City. *See* Utah R.Crim. P. 14(b); *see also* Pliego, 1999 UT 8 at ¶ 20, 974 P.2d 279.

II. Discovery Order

¶ 17 Defendant next argues the trial court erred in granting the State's motion for discovery. [FN4] Defendant contends that Rule 16(c) does not give the State "blanket discovery of Defendant's case." Under Rule 16(c),

FN4. In its motion for discovery, the State, pursuant to Utah R.Crim. P. 16(c), sought: (1) a list of all the witnesses that the defense intends to call for trial, including their addresses, telephone numbers, and dates of birth; (2) an opportunity for the prosecutor to inspect physical evidence, documents, and photographs that defendant intends to introduce at trial; (3) copies of any reports and conclusions of any experts that the defendant intends to call for trial, each expert's qualifications and information concerning any remuneration that the witness may be receiving for such testimony; (4) copies of any reports prepared by the defense investigators during the course of the prosecution of this case; (5) copies of any reports prepared by defense investigators where the defense intends to call the particular investigator as a witness; (6) copies of that portion of any reports prepared by defense investigators concerning statements made by witnesses the defense intends to call at trial; and (7) disclosure of any relationship to the defendant of any witnesses the defense intends to call at trial.

[e]xcept as otherwise provided or as privileged, the defense shall disclose to the prosecutor such information as required by statute relating to alibi or insanity and any other item of evidence which the court determines on *good cause shown* should be made available to the prosecutor in order for the prosecutor to adequately prepare his case.
Utah R.Crim. P. 16(c) (emphasis added).

¶ 18 Utah appellate courts have not defined the good cause requirement for prosecutors under Rule 16(c). However, "good cause" has been defined as used in Rule 16(a)(5) which requires the defendant to show good cause for the court to order discovery of evidence from the prosecution. [FN5]

FN5. Rule 16(a) provides in relevant part,
the prosecutor shall disclose to the defense upon request ... (5) ... evidence which the court determines on *good cause shown* should be made available to the defendant in order for the defendant to adequately prepare his defense.
Utah R.Crim. P. 16(a)(5) (emphasis added).
Evidence not requiring "good cause," but rather to be produced upon request, includes the defendant's criminal record and exculpatory evidence. *See* Utah R.Crim. P. 16(a)(2), (4).

¶ 19 In *Cannon v. Keller,* 692 P.2d 740 (Utah 1984), the Utah Supreme Court addressed a challenge by the State which asserted that the trial court had abused its discretion under Rule 16(a)(5) by ordering the State to disclose evidence to the defendant. *See* *id.* at 743. The State argued that the defendant had not shown good cause because "the defendant failed to offer any evidence that disclosure was necessary for the preparation of the defense." *Id.* While the court agreed that the defendant had not shown good cause it nonetheless upheld the trial court's discovery order, reasoning that,

the State itself provided "good cause" by representing that it needed to keep defendant's money to use at trial, when the only logical use would of necessity entail proof of the details of the transaction in which the informant was involved.... [The trial court] acted well within [its] discretion in ordering the State to disclose evidence that it had itself suggested would be used to prove guilt.
Id.

¶ 20 In *State v. Mickelson,* 848 P.2d 677 (Utah Ct.App.1992), this court dealt with "good cause" under Rule 16(a)(5). In *Mickelson,* the defendant challenged the trial court's order denying the defendant's request for the conviction records of the State's witnesses *679 under Rule 16(a)(5). *See* *id.* at 687-88.

¶ 21 In defining "good cause," we reasoned that *Cannon*

implicitly held that (1) "good cause" requires only a showing that disclosure of requested evidence is necessary to the proper preparation of the defense and (2) such a showing is made whenever the trial court is apprised of the fact that the evidence is material to an issue to be raised at trial.

Id. at 690. This court reasoned that this standard of "good cause"

> optimally balances the rights and obligations of parties in criminal litigation and ... allows a defendant ample access to evidence in the State's possession, by requiring, as the only prerequisite to discovery, that the court be apprised of the information's materiality to the case. Nonetheless, by requiring defendants to make this preliminary showing of materiality, *Cannon* also effectively protects the State and the court from irrelevant and vexing discovery requests. Thus, the trial can be conducted with a minimum of unnecessary delay, while still *allowing both parties a maximum of necessary preparation.*

Id. (emphasis added). In sum, the court held that Rule 16(a)(5) "only requires that the defendant establish the materiality of the requested records to the case." *Id.*

¶ 22 Applying this standard of good cause in *Mickelson,* this court held that the defendant satisfied the good cause requirement of Rule 16(a)(5). *See id.* The defendant "stated at the motion hearing that 'we request [the conviction records] simply because some prior convictions would be admissible in terms of impeachment of the credibility of the witness.' " *Id.* (alteration in original). We found this statement "sufficient to satisfy Rule 16(a)(5)'s good cause requirement," because it "clearly sets forth the legitimate potential value of the requested evidence to the defense, and, therefore establishes the materiality of the evidence to the issues to be raised at trial." *Id.*

[5][6] ¶ 23 Rule 16 employs essentially the same phraseology for both the prosecution and the defense, requiring disclosures from both sides of "any other item of evidence which the court determines on good cause shown should be made available to [the other side] in order for [the other side] to adequately prepare [its case]." Utah R.Crim. P. 16(a)(5), (c). These discovery requirements parallel each other and it is only logical that the standard of good cause required of one is the standard of good cause required of the other. [FN6] The reasoning behind the adoption of the *Mickelson* standard of "good cause" applies equally as well in protecting a defendant from "irrelevant and vexing discovery requests" from the prosecution, as it does in protecting the prosecution from such requests from the defense.

FN6. We note, of course, that a defendant's protection against self- incrimination prevents extensive prosecution discovery and is paramount to Rule 16(c) of the Utah Rules of Criminal Procedure. *See* U.S. Const. amend V; Utah Const. art I, § 12. *See generally* 23 Am.Jur.2d *Depositions &Discovery* § 462 (1983).

[7] ¶ 24 Applying the *Mickelson* standard of "good cause" to the instant case, we cannot say the trial court abused its discretion in granting the State's motion for discovery. All of the State's requested disclosures were material, as they involved information on witnesses and documents which Defendant intended to use at trial. [FN7]

FN7. Our holding is in agreement with cases from other jurisdictions which hold that good cause, in the context of criminal discovery, requires a showing of materiality. *See* United States v. Conder, 423 F.2d 904, 910 (6th Cir.1970) (holding good cause under federal discovery rule requires a showing of reasonableness and materiality); *People v. Cooper,* 53 Cal.2d 755, 770, 3 Cal.Rptr. 148, 349 P.2d 964, 973 (1960) (requiring more than "a mere desire for the benefit of all information which has been obtained" by the State in its investigation); *Engstrom v. Super. Ct.,* 20 Cal.App.3d 240, 245, 97 Cal.Rptr. 484, 487 (1971) (defendant's discovery request for information concerning victim's arrests for specific acts of aggression satisfied showing of good cause as information was material to defendant's disclosed self-defense theory); *State v. Dykes,* 252 Kan. 556, 847 P.2d 1214, 1216 (1993) (stating, "defendant has the burden of showing the materiality and reasonableness of the request"). *See generally* 23 Am.Jur.2d *Depositions & Discovery* § 430 (1983) ("Blanket, overbroad, 'all inclusive and unreasonable,' or 'dragnet variety' requests may be denied, since a defendant must show better cause for production than a mere desire to see all of the information obtained by the state.") (footnotes omitted).

*680 CONCLUSION

¶ 25 In conclusion, we hold that, under Rule 16(a)(1), the prosecution does not have a duty to disclose records to which it may have access to under GRAMA but which it does not possess nor intend to use. We further hold that "good cause" under Rule 16(c) requires the prosecution to establish only the materiality of the information requested from the defense before the defense is required to make such information available to the prosecution.

¶ 26 Accordingly, we affirm.

¶ 27 WE CONCUR: JAMES Z. DAVIS, Judge, GREGORY K. ORME, Judge.

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H

Court of Appeals of Utah.

David Thayne JONES, Petitioner and Appellant,
v.
Michael R. SIBBETT, et al., Respondents and Appellees.

No. 200000798-CA.

Nov. 30, 2000.

David Thayne Jones, Draper, pro se.

Jan Graham, Steven W. Allred, and Sharel S. Reber, Salt Lake City, for appellees.

Before GREENWOOD, ORME, and THORNE, JJ.

MEMORANDUM DECISION (Not for Official Publication)

PER CURIAM.

*1 A governmental entity is not required "to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person." Utah Code Ann. § 63-2-201(8)(c) (1996). Because the materials Jones attempted to obtain from the Board of Pardons had been provided to him on seven previous occasions (May 28, 1996; September 23, 1996; April 21, 1997; January 14, 1998; April 6, 1998; November 16, 1999; and December 22, 1999), it was appropriate for the trial court to conclude that his request unreasonably duplicated prior requests and to deny his "Petition for Review of Records Appeal Denial."

Accordingly, the trial court's September 29, 2000 order is affirmed. [FN1]

FN1. We have jurisdiction over this appeal pursuant to Utah R.App.P. 4(c), which states that "a notice of appeal filed after announcement of decision, judgment, or order but before the entry of the judgment or order of the trial court shall be treated as filed after such entry and on the day thereof."

END OF DOCUMENT

1999 WL 33244790
1999 UT App 371

(Cite as: 1999 WL 33244790 (Utah App.))

Court of Appeals of Utah.

Robert Dale STRALEY, Petitioner and Appellant,
v.
UTAH BOARD OF PARDONS AND PAROLE,
Respondent and Appellee.

No. 990888-CA.

Dec. 16, 1999.

Robert Dale Straley, Draper, pro se.

Jan Graham and James H. Beadles, Salt Lake City, for appellee.

Before GREENWOOD, DAVIS, and ORME, JJ.

MEMORANDUM DECISION (Not for Official Publication)

PER CURIAM.

*1 A person may petition a government agency to amend public, private, or protected records unless the records relate "to title to real or personal property, medical records, judicial case files, or any other records that the government entity determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system." Utah Code Ann. § 63-2-603(8) (1997). Straley seeks to amend the alienist report of Kenneth J. Hobbs, a licensed psychologist. However, his requested amendments are prohibited by section 63-2-603(8) either as medical records or as a record that must be maintained in its original form.

Accordingly, we affirm the trial court's dismissal of Straley's "Petition for Judicial Review of Board of Pardon's Denial to Amend Records."

END OF DOCUMENT

Court of Appeals of Utah.

Mark E. GRAHAM, Plaintiff, Appellant, and Cross-appellee,
v.
DAVIS COUNTY SOLID WASTE MANAGEMENT AND ENERGY RECOVERY SPECIAL SERVICE DISTRICT, the District's Administrative Control Board; and Legrand Bitter, the District's Executive Director, Defendants, Appellees, and Cross-appellant.

No. 980218-CA.

April 29, 1999.

*365 Jeffrey J. Hunt and R. Eric Smith, Parr, Waddoups, Brown, Gee, Loveless, Salt Lake City, for Appellant.

Larry S. Jenkins and Susan J. Mueller, Wood & Crapo, LLC, Salt Lake City, for Appellees.

Before GREENWOOD, Associate P.J., and DAVIS, and JACKSON, JJ.

OPINION

GREENWOOD, Associate Presiding Judge:

¶ 1 Plaintiff Mark E. Graham appeals the trial court's grant of summary judgment, dismissing his complaint alleging the Davis County Solid Waste Management and Energy Recovery Special Service District (the District) violated Utah's Government Records Access and Management Act (GRAMA). *See* Utah Code Ann. §§ 63-2-101 to -906 (1997 & Supp.1998). The District cross-appeals the trial court's denial of its Motion to Dismiss or for Summary Judgment contending the trial court lacked jurisdiction. We affirm.

*366 BACKGROUND

¶ 2 On April 28, 1997, Graham sent a letter to the District asking that it give him various documents [FN1] to educate the members of Residents of Davis County Clear Air Committee (the Committee), a nonprofit organization to which Graham belonged. The District responded by letter dated May 7, 1997, informing Graham that the contract he had requested between the District and Rigo & Rigo Associates would be available to him upon payment of $2 in copying fees. The District also informed Graham that all other documents he requested, consisting of several hundred pages from various locations, would be made available to him only upon payment of copying fees as well as a $20 per hour compilation fee. In a letter to the executive director of the District, LeGrand Bitter (Bitter), Graham stated that under GRAMA, the District could not charge the $20 per hour compilation fee and asked that the District make the documents available to him between May 27 and June 10, 1997. Bitter responded that the documents would be available for review during the time period requested, but that the District intended to charge Graham the $20 per hour compilation fee under GRAMA. A subsequent letter from Bitter told Graham that, while there was no charge for inspecting the documents, any copying fees and $280 in compilation fees must be paid before Graham would be allowed to inspect the documents.

FN1. Graham's request for documents included: 1. The current contract(s) between the Special Service District and Dr. H. Gregor Rigo and/or his firm, Rigo & Rigo Associates; 2. Records relating to the stack test(s) conducted during January and/or February, 1997, namely:
a. samples taken, journals, personal field notes, and inspection logs
b. laboratory analysis of air samples taken
c. any correspondence between the District and the entities responsible for gathering and/or analyzing and evaluating the air samples subsequent to the date of sampling
d. memos or internal documents (within the Special Service District) relating to the stack test or the laboratory analysis
e. any deviation or departure from the prescribed methods for gathering samples and their reason(s), or problems encountered during the sample gathering process

¶ 3 Pursuant to District Ordinance 92-C, [FN2] Graham appealed the $280 charge for staff time involved in compiling the requested documents, arguing that both GRAMA and Ordinance 92-C prohibited the District from charging Graham for staff time spent compiling the records. Bitter denied Graham's appeal, informing Graham that he had thirty days to file a written appeal with the District's Administrative Control Board (the *367 Board). Graham timely appealed to the Board which, after hearing argument from Graham, unanimously affirmed the denial.

FN2. Ordinance 92-C provides, in pertinent part:

Section 5--Public Right to Records

A. Members of the public shall have the right to see, review, examine and take copies, in any format maintained by the District ....

Section 10--Fees

A. Applicable fees for ... requests under this Policy will generally be set at actual cost or as otherwise established by policies adopted under this Policy .... This District will charge the following fees for requests relating to the Government Record Access and Management Act.

1. Reviewing a record to determine whether it is subject to disclosure .... No charge
2. Inspection of record by person .... No charge
3. Copy Fees .... 25 cents per page
4. ComputerDisk .... $5.00 (Plus overhead and time of District staff in preparation of information request billed at the rate of $20.00 per hour)
5. Other Forms .... Actual Cost (Plus overhead and time of District staff in preparation of information request billed at the rate of $20.00 per hour)
6. Miscellaneous Fees .... Actual Cost (Plus overhead and time of District staff in preparation of information request billed at the rate of $20.00 per hour)

Section 11--Appeal Process

A. Any person ... may appeal the determination within thirty calendar (30) days ... by filing a written appeal.

....

C. The District Executive Director shall make a determination on the appeal within thirty business (30) days ....

....

E. The person may file a written notice of appeal to the Administrative Control Board ....

F. If the Administrative Control Board affirms the denial, ... the person may petition for judicial review in District Court as provided in [Utah Code Ann.] § 63-2-404.

Davis County, Utah, Davis County Solid Waste Management and Energy Recovery Special Service District, Ordinance 92-C.

¶ 4 On July 30, 1997, pursuant to Ordinance 92-C and section 63-2-404(2) of the Utah Code, Graham filed a complaint naming the Committee as plaintiff in Second District Court, alleging the District violated its own

ordinance and GRAMA in charging him $20 per hour in compilation fees. *See* Utah Code Ann. § 63-2-404(2) (1997). The District's answer to his complaint alerted Graham to the fact that he could not file a complaint on behalf of the Committee. He therefore moved to amend the complaint, substituting himself as plaintiff. The District responded by filing a Motion to Dismiss or for Summary Judgment, arguing the court lacked jurisdiction to hear the case. The same day the District filed this motion, the trial judge granted Graham's request to amend the complaint. After receiving briefs from both parties on the jurisdictional issue, the trial court denied the District's Motion to Dismiss or for Summary Judgment. The court also granted Graham's request to amend the complaint and related the amended complaint back to the date of the original filing under Rule 15 of the Utah Rules of Civil Procedure.

¶ 5 Graham subsequently filed a Motion for Summary Judgment and the District responded by filing a Cross-Motion for Summary Judgment. The court granted the District's Motion for Summary Judgment, concluding the imposition of the $280 fee was proper under GRAMA. This appeal followed.

ISSUES AND STANDARDS OF REVIEW

[1][2] ¶ 6 The District argues the trial court erred in allowing Graham to amend the complaint and relating the amended complaint back to the original filing date. We review the trial court's decision allowing Graham to amend the original complaint, substituting himself as plaintiff, for an abuse of discretion. *See Kasco Servs. Corp. v. Benson,* 831 P.2d 86, 92 (Utah 1992). However, whether the original complaint was void ab initio and would deprive the court of jurisdiction presents a question of law that we review without deference. *See Bonneville Billing v. Whatley,* 949 P.2d 768, 771 & 772 n. 3 (Utah Ct.App.1997).

[3] ¶ 7 Graham argues the trial court erred in granting summary judgment in the District's favor on his claim that the District violated GRAMA by charging him a compilation fee in conjunction with his request for various District records. On appeal from a grant of summary judgment, we view the evidence in the light most favorable to the non moving party and affirm only if there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. *See* Utah R. Civ. P. 56(c); *Drysdale v. Ford Motor Co.,* 947 P.2d 678, 680 (Utah 1997). In addition, the trial court's grant of summary judgment was based on an interpretation of GRAMA, presenting a question of statutory interpretation that we review under a correction-of-error standard. *See Jeffs v. Stubbs,* 970 P.2d 1234 (Utah 1998).

ANALYSIS

I. Jurisdictional Issue

¶ 8 The District argues the original complaint filed by the Committee was void because it violated both the Utah Assumed Name Statute, *see* Utah Code Ann. § 42-2-5(1) (1998), and the rule prohibiting an unincorporated association from being represented by a nonattorney. *See Life Science Church v. Shawano,* 221 Wis.2d 331, 585 N.W.2d 625, 627 (App.1998), *review denied,* 221 Wis.2d 656, 588 N.W.2d 633 (1998). The District also argues that because the original complaint was void and the amended complaint was not timely filed, the trial court lacked jurisdiction. *See* Utah Code Ann. § 63-2- 404(2)(b)(i) (1997) (providing party seeking judicial review from records committee must file petition within thirty days after governmental entity has responded to request for records). In opposition, Graham contends that under Utah's liberal rules governing the amendment of complaints, the trial court properly allowed Graham to amend his complaint and related the amended complaint back to the original filing date.

*368 ¶ 9 In determining whether the Committee's original complaint was void, we address the threshold question of whether an unincorporated association may bring an action in the courts of this state. Because the history of an unincorporated association's ability to sue provides relevant background for our discussion, we first discuss the traditional rules governing an unincorporated association's ability to sue and statutory enactments that have changed the common law rules.

¶ 10 Although most jurisdictions traditionally allowed an unincorporated association to be sued, such organizations, absent specific statutory authority, were not recognized as legal entities and, as such, lacked the capacity to sue. *See Disabled Am. Veterans v. Hendrixson,* 9 Utah 2d 152, 155, 340 P.2d 416, 418 (Utah 1959) ("Under Rule 17(d) of the Utah Rules, an unincorporated association may be sued by its common name but no authority has been given for it to institute an action in such common name."); *see also Ionic Lodge # 72 F. & A.A.M. v. Ionic Lodge Free Ancient & Accepted Masons # 72 Co.,* 232 N.C. 252, 59 S.E.2d 829, 832 (1950) (stating unless given capacity to sue "by some pertinent statute, an unincorporated association has not the capacity to sue"), *rev'd on other grounds,* 232 N.C. 648, 62 S.E.2d 73, 75 (1950). Consequently, any legal action taken on behalf of an unincorporated association was considered a nullity. *See Oliver v. Swiss Club Tell,* 222 Cal.App.2d 528, 35 Cal.Rptr. 324, 330 (1963).

¶ 11 However, as unincorporated associations such as "social clubs, religious organizations, *environmental societies,* athletic organizations, condominium owners, lodges, stock exchanges and veterans," began to proliferate, courts recognize[d] that

> the society of today rests upon the foundation of group structures of all types, such as the corporation, the cooperative society, [and] the public utility. Such groups must, of course, operate successfully within the society; one of the prerequisites to that functioning is, generally, liability to suit and *opportunity for suit.* To frustrate that viability by the imposition of outmoded concepts would be to impair the institutions as well as to impede the judicial process.

Barr v. United Methodist Church, 90 Cal.App.3d 259, 153 Cal.Rptr. 322, 327 (1979) (quoting *Daniels v. Sanitarium Ass'n, Inc.,* 59 Cal.2d 602, 30 Cal.Rptr. 828, 381 P.2d 652 (1963))(emphasis added). As a result, many states, including Utah, enacted legislation or adopted rules giving unincorporated associations the power to sue. *See* Utah R. Civ. P. 17(d) advisory committee note (stating purpose of amendment to Rule effective September 1, 1991, was to "conform to the holding in *Cottonwood Mall Co. v. Sine,* 767 P.2d 499 (Utah 1988), which allows an unincorporated association to sue in its own name"); *Ionic Lodge,* 59 S.E.2d at 834 ("[I]t can hardly be questioned that if [an unincorporated] association might be sued in its common name ..., it follows as a corollary conclusion that it has also the capacity to sue.").

[4] ¶ 12 In keeping with these developments, Utah Rule of Civil Procedure 17(d) was amended to provide that

> When two or more persons associated in any business either as a joint-stock company, a partnership or *other association, not a corporation, transact such business under a common name,* whether it comprises the names of such associates or not, *they may sue* or be sued by such common name.

(Emphasis added.) In this case, the Committee, as an unincorporated, voluntary environmental watch-dog association, falls within the purview of the "other association" language of Rule 17(d). Although Utah courts have not articulated a test to determine when a party is transacting business for purposes of Rule 17(d), *see Hebertson v. Willowcreek Plaza,* 923 P.2d 1389, 1392 (Utah 1996); *Hebertson v. Willowcreek Plaza,* 895 P.2d 839, 840 (Utah Ct.App.1995), we note that the Committee, apparently acting under a common name for several years in monitoring and working to improve air quality in Davis County, was likely engaged in transacting business. *Cf. Askew v. Joachim Mem'l Home,* 234 N.W.2d 226, 236 (N.D.1975) (holding voluntary charitable association was transacting business within state and as such could be sued); *369*J.M. & M.S. Browning Co. v. State Tax Comm'n,* 107 Utah 457, 465, 154 P.2d 993, 996 (Utah 1945) (stating what constitutes transacting business must be determined within context in which phrase is used).

[5] ¶ 13 Our determination that the Committee could properly file suit against the District under Rule 17(d) does not, however, end our inquiry into the jurisdictional issue. Although the Committee has the power to sue under Rule 17(d), it is nonetheless required, as the District correctly points out, to register as an association conducting business in Utah under an assumed name. *See* Utah Code Ann. § 42-2-5(1) (1998). That section provides, "[e]very person who carries on, conducts, or transacts business in this state under an assumed name, whether that business is carried on, conducted, or transacted as an individual, association, partnership, corporation, or otherwise, shall file with the Division of Corporations and Commercial Code ...." *Id.* The statute further provides that an entity conducting business under an assumed name that fails to comply with this section is barred from maintaining an action in any court of the state of Utah. *See* Utah Code Ann. § 42-2-10(1) (1998) (stating failure to comply with statute precludes filing action). [FN3] Because the Committee failed to register its name under this statute, it violated section 42-2-10(1).

> FN3. Rule 17(d) and sections 42-2-5(1) and 10(1) refer to "transact[ing] business," and would logically define that term similarly so that one qualified to sue under the rule would be required to register under the assumed name statute. *See* Utah Code Ann. § 42-2-5(1), 10(1) (1998); Utah R. Civ. P. 17(d).

[6] ¶ 14 In addition to failing to comply with the Utah Assumed Name Statute, the filing of the original complaint by Graham on behalf of the Committee also violated the well-established rule that an unincorporated association, like a corporate entity, may not be represented by a nonlawyer. *See Life Science Church,* 585 N.W.2d at 627 ("Courts have denied unincorporated associations the right to appear in court without licensed legal counsel."); *see also In re Campaign for Ratepayers' Rights,* 137 N.H. 707, 634 A.2d 1345, 1350 (1993) (same). Therefore, in spite of the fact that the Committee was permitted under Rule 17(d) to file suit against the District, its complaint was defective as a result of its violation of section 42-2-10(1) and because it was not represented by licensed legal counsel.

[7] ¶ 15 Although the Committee's original complaint failed to comply with these requirements, we reject the District's argument that these deficiencies rendered the pleading a complete nullity so as to deprive the trial court of jurisdiction to consider the motion to amend the complaint. In other words, the Committee could have cured the deficiencies in the complaint by filing under the Utah Assumed Name Statute and by entering

an appearance of counsel on its behalf. *See Jones v. Niagara Frontier Transp. Auth.,* 722 F.2d 20, 23 (2nd Cir.1983) (giving non lawyer who filed complaint on behalf of corporation forty-five days to refile through licensed counsel); *Old Hickory Eng'g & Mach. Co. v. Henry,* No. 01-A-01-9410-CV-00463, 1995 WL 214295, at *3, 1995 Tenn App. LEXIS 231, at *6 (Tenn.Ct.App. Apr. 12, 1995) (rejecting argument that filing of complaint by nonlawyer on behalf of corporation rendered it void, stating it would be too harsh to hold filing of complaint void such that subsequent notice of appearance by counsel could not revive action, concluding original complaint was not void as a matter of law and later notice of appearance of counsel was sufficient to correct defect), *rev'd on other grounds,* 937 S.W.2d 782, 786 (Tenn.1996).

[8] ¶ 16 In this case, the Committee did not cure the defect in its complaint by complying with the Utah Assumed Name Statute or retaining licensed counsel to represent it; nevertheless, we conclude the substitution of Graham as plaintiff was a permissible means of remedying the deficiencies in the Committee's original complaint. This conclusion comports with Utah's liberal rules governing the amendment of pleadings. *See* Utah R. Civ. P. 15(a) (instructing trial courts that "leave [to amend pleadings] shall be freely given when justice so requires"); *Wilcox v. Geneva Rock Corp.,* 911 P.2d 367, 369 (Utah 1996) (interpreting Rule 15(a) "consistently *370 with the liberal pleading practices mandated by rule 8 of the Federal Rules of Civil Procedure"). [FN4]

FN4. The District argued at oral argument that *Haro v. Haro,* 887 P.2d 878 (Utah Ct.App.1994), controls this case. We disagree. In that case, we held that the original complaint was a nullity--such that the complaint could not be amended--because the party that filed the original complaint lacked capacity to bring the action. *Id.* at 880. In contrast, the complaint in this case, although technically deficient, was not filed by a party lacking the capacity to sue.

[9][10] ¶ 17 Having concluded that substituting Graham as plaintiff in the amended complaint was sufficient to cure defects in the original complaint, we next address whether it was proper for the trial court to relate the amended complaint back to the date of the original filing, rendering it timely under section 63-2-404(2)(b)(i). Rule 15(c) of the Utah Rules of Civil Procedure provides that "[w]henever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading." Utah R. Civ. P. 15(c). Further, the Utah Supreme Court has held that pleadings may be amended and related back to the date of the original filing as long as parties in an action have been given notice of the claims against them and an opportunity to respond. *See Wilcox,* 911 P.2d at 369-70. " 'What [the] parties are entitled to is notice of the issues raised and an opportunity to meet them. When this is accomplished, that is all that is required.' " *Id.* at 369 (quoting *Cheney v. Rucker,* 14 Utah 2d 205, 211, 381 P.2d 86, 91 (1963)). Finally, a court may relate an amended complaint back to the date of the original filing only "when new and old parties have an identity of interest; so it can be assumed or proved the relation back is not prejudicial." *Id.* (quoting *Doxey-Layton Co. v. Clark,* 548 P.2d 902, 906 (Utah 1976)).

¶ 18 In this case, allowing Graham to substitute himself as plaintiff in place of the Committee did not impair the District's opportunity to respond to the claims against it. The amendment merely changed the plaintiff's status as an entity to an individual "without changing the ultimate liability sought to be imposed." *Kerney, II v. Fort Griffin Fandangle Assoc., Inc.,* 624 F.2d 717, 720 (5th Cir.1980). Furthermore, the District was not prejudiced by "the delay between the original and amended pleadings." *Id.* There was a sufficient identity of interest between the Committee and Graham to justify relation back of the amended complaint. We therefore conclude the trial court neither abused its discretion, nor erred as a matter of law, in allowing Graham to amend the original complaint, substituting himself as plaintiff, and relating the amended pleading back to the date of the original filing.

II. GRAMA

¶ 19 We next address whether, under GRAMA, the District was entitled to judgment as a matter of law. GRAMA provides in pertinent part:

63-2-201. 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 63-2-203 and 63-2-204.

....

63-2-203. Fees.

(1) A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of duplicating a record

....

(2) 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:

(a) the cost of staff time for summarizing, compiling, or tailoring the record either into an *organization or media* to meet the person's request;

(b) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request.

Utah Code Ann. §§ 63-2-201, -203 (1997) (emphasis added).

¶ 20 The District argues that under the plain meaning of section 63-2- 203(a) and (b), *371 it is authorized to charge Graham $20 per hour for compilation of the records he requested. Graham counters that the statute's plain meaning prohibits the imposition of such fees because he did not request the documents in a form other than that normally used by the District. Graham also contends that imposing such a fee unreasonably restricts his access to public documents in derogation of the legislative intent in enacting GRAMA.

[11] ¶ 21 According to standard rules of statutory construction, Utah appellate courts first look to a statute's plain meaning in discerning legislative intent. *See* *Johnson v. Redevelopment Agency,* 913 P.2d 723, 727 (Utah 1995); *Hansen v. Hansen,* 958 P.2d 931, 934 (Utah Ct.App.1998). "To that end, a statute should be construed as a comprehensive whole, not in a piecemeal fashion." *Field v. Boyer Co., L.C.,* 952 P.2d 1078, 1085 (Utah 1998) (Stewart, J., dissenting) (citing *Clover v. Snowbird Ski Resort,* 808 P.2d 1037, 1045 (Utah 1991)).

¶ 22 In enacting GRAMA, our Legislature has balanced the public's right to access government documents against the government's interest in operating free from unreasonable and burdensome records requests. Accordingly, GRAMA recognizes the importance of public access to governmental records. *See* Utah Code Ann. § 63-2-102(1)(a) (stating Legislature recognizes "the public's right of access to information concerning the conduct of the public's business"). However, GRAMA also limits access to public records in several circumstances, including situations in which there is "a public policy interest in allowing a government to restrict access to certain records ... for the public good." *Id.* § 63-2-102(2). Access to public records is also limited to "reasonable access," and the Legislature has allowed restrictions on the public's access to records when the "public interest in allowing restrictions on access to records may outweigh the public's interest in access." *Id.* § 63-2-102(3)(a)-(b).

¶ 23 In the context of this case, the Legislature has also restricted access to public records by allowing agencies to impose fees for the production of records in limited instances. Although the Legislature has mandated "easy" access to public records, *see id.* § 63-2-102(3)(a), it has also attempted to prevent public agencies from becoming overwhelmed by time-consuming and burdensome records requests by allowing government agencies to charge for the production of records under certain circumstances. *See id.* §§ 63-2-201 to -203. For example, section 63-2-201(8)(b)(i) requires a governmental entity to provide records in a particular format only if "the governmental entity is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and ... the requestor agrees to pay the governmental entity for its costs incurred in providing the record in the requested format in accordance with Section 63-2-203." Utah Code Ann. § 63-2-201(8)(b)(i) (1997). GRAMA also allows a governmental entity to charge for the actual cost of duplicating a record as well as for staff time used in compiling records in a form other than that used by the agency. *See id.* § 63-2-203(1)-(2).

[12][13] ¶ 24 Consistent with the plain meaning of the statute and given this statutory context, we must determine the meaning of the phrase "compile a record in a form other than that normally maintained by the governmental entity" as contained in section 63-2-203(2). "Compile" is defined in Webster's Third New International Dictionary (1986) as "to collect and assemble (written material or items from various sources) into a document or volume or a series of documents or volumes." *Id.* at 464. "Form" is defined as "orderly arrangement or method of arrangement." *Id.* at 892. These definitions are more expansive than those urged by plaintiff, which would limit the ability to charge a fee to only those circumstances when the medium of the record is changed.

¶ 25 A recent Iowa decision appears particularly relevant to our analysis. There, the court stated:

> Fourteen states and the District of Columbia provide that the cost of searching for and retrieving records may be included in copy fees. These states include Alaska, Hawaii, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, *372 Rhode Island, Utah, Virginia and Wisconsin.... [Under the statutory scheme, w]e find ... the legislature's intent that a lawful custodian has the authority to charge a fee to cover the costs of retrieving public records. Thus, access to public records does not necessarily mean "free" access. We recognize that permitting [public] entities ... to charge members of the public a fee to cover the cost of retrieving public records does, to some extent, limit public access to public records. While the legislature did not intend for [the public records law] to be a revenue measure, at the same time it did not intend for a lawful custodian to bear the burden of paying for all expenses associated with a public records request. [In addition, the fee charged] is reasonable in light of [the] broad request for "all working papers, correspondence and documentation regarding the Administrative Structure Review Team." ... [Finally,] the [requested documents] pertaining [to the] request consisted of

notes and papers from numerous school district employees. Gathering these documents thus involved more than just searching for papers in a file cabinet.

....

We conclude ... a public body ... may charge members of the public a retrieval fee associated with a public records request ..., but must be *reasonable in light of the circumstances surrounding the request.*

Rathmann v. Board of Dirs. of Davenport Comm. Sch., 580 N.W.2d 773, 778 n. 5 & 778-80 (Iowa 1998) (citations omitted & emphasis added).

[14][15] ¶ 26 In keeping with thepurposes of GRAMA and maintaining the balance between the public's right to access and government's interest in operating efficiently, we conclude that, under section 63-2-203(2), governmental entities may not charge for merely assembling documents. That is, an agency may not charge for a request under section 63-2-203(2) if the agency is only required to retrieve a single document or set of documents from a readily available source and provide them to the requestor for inspection. An agency may, however, assess fees in conjunction with a record request that involves extracting materials from a larger document or source and compiling them in a different form. In other words, if an agency is required to do more than simply retrieve and make available a record in its original form, then the agency may charge a compilation fee for its production.

[16][17][18][19] ¶ 27 However, the right of government agencies to assess these types of fees is not absolute. The government bears the burden of establishing the necessity of "compiling" the records in a manner so as to justify the charging of fees to the public. If a records request involves the assembly of documents in a different medium or organization, the agency should, if appropriate under sections 63-2-302 to 304, allow the requestor to avoid compilation charges by offering the requestor the option of searching for and retrieving the documents him or herself. Moreover, if the requestor could have retrieved the documents him or herself, but the agency chooses to instead compile and produce the records itself, the agency may not then impose fees pursuant to section 63-2-203. Finally, we suggest that sound public policy requires an agency, prior to compiling records and imposing a fee, to inform the requestor that fees will be assessed and, if so desired, allow the requestor to modify or withdraw the request based on this information.

[20][21] ¶ 28 In sum, a governmental agency may assess compilation fees in conjunction with a request for records only if: (1) a request specifies that the documents be compiled in a form other than that used by the agency and the requestor consents to the imposition of compilation fees; or (2) the request, without specifying that the records be compiled in a form other than that maintained by the agency, nonetheless requires the agency to extract materials from a larger document or source and it is not feasible or reasonable to allow the requestor to compile the records. Finally, to protect the public's right to access public records, we conclude that when a request for public records does not specify that the records be compiled in a form other than that used by the agency, the burden is on the agency to show that it is *373 impossible to allow the requestor to obtain the records on his or her own and that compliance with the request requires the compilation of the records in a form other than that maintained by the agency.

[22] ¶ 29 We turn now to the trial court's findings of fact regarding the District's compilation of the records requested by plaintiff. [FN5] The pertinent findings of fact state:

FN5. These findings are undisputed in all material aspects.

17. That because of the variety of records involved in accommodating Mr. Graham's request, the District could not and did not store them in one document, computer program, or central file;
18. That the District had to take files, documents, and data from several sources and organize them in order to respond to Mr. Graham's request;
19. That the District made a thorough search of all files and records related to the testing to insure that the District produced everything relevant;
20. That in order to do so, it was necessary for the District to contact those people who may have been involved in the testing at issue and obtain their assistance;
21. That John Watson, Bart Baker, certain operators and maintenance personnel, and Jack Schmidt searched, retrieved, and compiled the records requested by Mr. Graham. Collectively, they spent a total of 14 hours;
22. That the District retrieved and compiled information from District files located at individual employees' work station, daytimers, operator logs, testing protocols, general District files that may relate to testing, and a computer database;
23. That research on the computer database was a time-consuming process. The database is continually updated, and after a period of time, information stored in the database is downloaded to tape. Some of the information Graham requested has been stored on tape, requiring an operator to peruse the computer and tapes to locate and print hard copies of the information plaintiff requested;

> 24. That the District assessed plaintiff a $280.00 fee based on the 14 hours actually expended for the several searches by the District staff[.]

¶ 30 As the trial court noted, Graham disputed neither the hours worked nor the rate charged. We conclude, as did the trial court, that the charge was reasonable and that the undisputed facts comport with the statutory language allowing a fee to be assessed for compiling records in a form other than that normally maintained by the agency. Additionally, because Graham did not prevail below or on appeal, he is not entitled to attorney fees.

CONCLUSION

¶ 31 Any deficiencies in the original complaint were effectively cured by substituting Graham as plaintiff in the amended pleading. Also, because the District was not prejudiced by the trial court's decision to allow Graham to amend the complaint, the court did not abuse its discretion in relating the amended pleading back to the date of the original filing.

¶ 32 In responding to a request for records, a public agency may impose a compilation fee only when the request specifies or requires the agency to extract documents from a larger source, or to change the records' medium or organization. In addition, the agency should inform a requestor, prior to compiling records, that a compilation fee will be imposed, and, if appropriate, allow the requestor an opportunity to avoid the fee by searching for and retrieving the documents without the agency's assistance. In this case, the trial court's findings support the conclusion that in responding to Graham's request for records, the District was required to compile the documents in a form other than that maintained by the District. Accordingly, we affirm the trial court's grant of summary judgment in favor of the District and deny Graham's request for attorney fees.

¶ 33 JAMES Z. DAVIS, Judge and NORMAN H. JACKSON, Judge, concur.

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Supreme Court of Utah.

Jan L. TYLER, Plaintiff and Appellee,
v.
DEPARTMENT OF HUMAN SERVICES, Norman G. Angus, and Charles F. Larsen,
Defendants and Appellants.

No. 930428.

April 27, 1994.

*119 Elizabeth T. Dunning, Mary J. Woodhead, Salt Lake City, for plaintiff and appellee.

Jan Graham, Atty. Gen., Linda Luinstra-Baldwin, Carol L. Verdoia, John P. Soltis, Barbara E. Ochoa, Asst. Attys. Gen., for defendants and appellants.

PER CURIAM:

[1] Defendants have filed a notice of appeal from an order of the district court compelling discovery. [FN1] The matter is before this court on plaintiff's motion to dismiss pursuant to rule 10(a)(1) of the Utah Rules of Appellate Procedure. Plaintiff argues that the order appealed is interlocutory in nature and is not appealable as a matter of right. Defendants concede that the order is not a final judgment, but they do not seek an interlocutory appeal under rule 5 of the Utah Rules of Appellate Procedure. Instead, defendants claim a right to appeal this order in accordance with the "collateral order" doctrine, or *Cohen* rule, [FN2] which they assert is a recognized exception to the general rule that only final judgments are reviewable by an appellate court. The state has urged this court to adopt the federal collateral order doctrine in several other cases filed this term. But *Cohen* is not applicable in this case because the order is not one that, in the words of *Cohen,* is a "final disposition of a claimed right" that will escape review entirely if an appeal of right is not allowed. *120*Cohen v. Beneficial Indus. Loan Corp.,* 337 U.S. 541, 546- 47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949). Indeed, defendants had an avenue to appeal this interlocutory order under rule 5 of the Utah Rules of Appellate Procedure, which they chose not to pursue.

FN1. The district court ruled that the provisions of the Government Records Access and Management Act, Utah Code Ann. §§ 63-2-101 to - 909, do not apply to protect the state against discovery, because discovery in litigated matters is governed by the rules of civil procedure.

FN2. This doctrine was first enunciated by the Supreme Court in *Cohen v. Beneficial Industrial Loan Corp.,* 337 U.S. 541, 546, 69 S.Ct. 1221, 1225, 93 L.Ed. 1528 (1949). In that case, the Court, interpreting a statute which restricted appellate review to final judgments, ruled that the statute did not exclude review of certain interlocutory orders which do not constitute "steps toward [a] final judgment in which they will merge." *Id.* at 546, 69 S.Ct. at 1225. The Court held the order appealable and stated, "This decision appears to fall in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Id.*

[2] Three avenues exist in this jurisdiction for securing review of a nonfinal order, one mandatory and two discretionary. The first avenue is to petition this court to grant an interlocutory appeal pursuant to rule 5 of the Utah Rules of Appellate Procedure, as stated above. Review is discretionary with the Utah appellate courts under rule 5. The second avenue is to seek certification of an order under rule 54(b) of the Utah Rules of Civil Procedure. [FN3] Review is mandatory on the part of the appellate courts if the trial court has validly certified an order as final under rule 54(b). A third possible avenue, usable when neither an appeal of right nor an interlocutory appeal is available, is to invoke this court's power to grant extraordinary relief under rule 65B(e) of the Utah Rules of Civil Procedure. [FN4] Review is, again, discretionary with the Utah appellate courts under rule 65B(e). The bases for proceeding under these three rules differ from each other, but each provides a method for seeking review of a lower tribunal's order at a time prior to entry of a final appealable judgment. Our rules allowing discretionary review provide parties an opportunity to convince an appellate court that the issue raised is so important that review prior to full adjudication of the case is justified or that the order will escape review altogether if an appeal is not allowed. Utah appellate courts therefore have ample power to consider such an appeal if immediate review is appropriate.

FN3. Under rule 54(b) of the Utah Rules of Civil Procedure, a party may seek certification of finality of an order entered in an action involving multiple claims or multiple parties if the order adjudicates a separate claim, or all of the claims between two or more but fewer than all of the parties, and the trial court finds no just reason for delay. *Kennecott Corp. v. State Tax Comm'n,* 814 P.2d 1099 (Utah 1991); *Pate v. Marathon Steel Co.,* 692 P.2d 765 (Utah 1984).

FN4. For example, one whose rights are affected by an order entered in a case to which that person is not a party may wish to seek extraordinary relief under rule 65B of the Utah Rules of Civil Procedure upon a showing that no other "plain, speedy and adequate remedy" including appeal is available. Utah R.Civ.P. 65B(a). See *Society of Professional Journalists v. Bullock,* 743 P.2d 1166 (Utah 1987), *KUTV v. Conder,* 668 P.2d 513 (Utah 1983), and *KUTV v. Conder,* 635 P.2d 412 (Utah 1981), all decided under earlier versions of the rule.

Defendants did not seek permission from this court to file an interlocutory appeal. Because no final judgment has been entered in the case, and defendants have alternative avenues for bringing their claims before Utah appellate courts, they are not entitled to appeal as a matter of right. The motion to dismiss the appeal is granted.

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Supreme Court of Utah.

William ANDREWS, Petitioner,
v.
The UTAH BOARD OF PARDONS; H.L. Haun, Chairman of the Board of Pardons; Donald E. Blanchard, Michael R. Sibbett, and William L. Peters, as members of the Utah Board of Pardons; Alan Keller, pro tem member of the Utah Board of Pardons; and Scott Carver, Warden of the Utah State Prison, Respondents.

No. 920347.

July 28, 1992.
Supplemental Opinion, July 29, 1992.
Rehearing Denied Aug. 18, 1992.

*792 R. Paul Van Dam, Salt Lake City, for State.

Robert R. Wallace, Daniel S. McConkie, Salt Lake City, for State, Blanchard, Haun, Peters, Sibbett, Carver, and Keller.

Lorenzo Miller, Salt Lake City, for the Bd. of Pardons.

Timothy K. Ford, Seattle, Wash., Gordon G. Greiner, Donald A. Degnan, Denver, Colo., Julius Chambers, Steve Hawkins, New York City, Robert M. Anderson, Salt Lake City, for Andrews.

PER CURIAM:

William Andrews has filed an application seeking a writ of habeas corpus and an extraordinary writ, contending that the Board of Pardons failed to comply with the Open and Public Meetings Act and violated his constitutional rights in denying his request for a commutation hearing and in declining to hold hearings on the matter. Andrews filed this petition with this court on July 23, 1992. The following day was a legal holiday in Utah. As of the time of this order, the Board of Pardons has not responded to the petition. Just as this opinion was being finalized, an amicus brief was filed by the State, together with a motion for leave to file. We grant the motion and have considered the State's brief.

We treat the petition only as a request for an extraordinary writ. *See* Utah R.App.P. 19. We rule as follows:

We begin with Andrews' argument that the Board of Pardons failed to comply with the Utah Open and Public Meetings Act because it spent more than six weeks reviewing Andrews' petition for a commutation hearing without ever holding an open, public hearing on its fact-finding and decision-making processes. Because of this failure, Andrews contends, this court should void the Board's denial of a commutation hearing. We agree in part.

[1][2] We agree with Andrews that the Utah Open and Public Meetings Act, Utah Code Ann. §§ 52-4-1 to -9, applies to the proceedings of the Board of Pardons because the Board is a "public body" within the meaning of the Act. *See id.* § 52-4-2(2). The State argues that the process by which the Board arrived at the decision not to grant a commutation hearing was not a "meeting" within the meaning of the Act and, therefore, the Act has no application here. We reject the State's argument. The plain language of the definitional section of the Act provides that meetings of the sort conducted by the Board are covered by the Act's provisions. Section 52-4-2 provides that a "meeting" is

> the convening of a public body, with a quorum present, ... for the purpose of discussing or acting upon a matter over which the public body has jurisdiction or advisory power.... "Convening" ... means the calling of a meeting of a public body by a person or persons authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction.

Clearly, the meetings of the Board by which it arrived at the decision not to grant a hearing, which, in turn, is a necessary constitutional prerequisite to the grant of commutation, constitutes a "meeting" for the purposes of the Act. The business done there was nothing if not the "discuss[ion] or acting upon a matter over which the [Board] has jurisdiction."

Having found that the Act applies, we cannot determine from the Board's order of July 21, 1992, whether the Board has violated the requirements of the Act. According to that order, the Board proceedings to date consisted not of information gathering, but of deliberations over the petition for a new commutation hearing, deliberations that included a review of the full public commutation hearing held in 1989. If this is the case, these proceedings would *793 be of a judicial nature and exempt from the provisions of the statute. *See Common Cause of Utah v. Utah Public Serv. Comm'n,* 598 P.2d 1312, 1315 (Utah 1979).

However, the Board's order is less than clear as to the information that was considered in reaching the

decision to deny a hearing. Petitioner has filed an affidavit averring that the Board, *inter alia,* has requested from outside sources videotapes of interviews of Andrews and other materials that were not a part of the record in the 1989 commutation hearing. Because of the ambiguity in the order and the conflict created by the affidavit on information and belief, we are unable to determine whether the Open and Public Meetings Act has been violated. We therefore direct the Board to respond to the allegations of petitioner and to inform this court of the materials upon which it relied in deciding not to order a full commutation hearing so that we can dispose of this aspect of the instant petition.

[3] We next turn to Andrews' constitutional argument. Andrews contends that a statute passed in 1992 created a new and higher substantive standard for obtaining a commutation hearing, a constitutional prerequisite for the grant of commutation. *See* Utah Const. art. VII, § 12; Utah Code Ann. §§ 77-27- 5.5(6) & (7). Andrews contends that this higher standard violates state and federal constitutional prohibitions of *ex post facto* laws. We agree.

For the Board to apply the substantive standards contained in the 1992 statute, section 77-27-5.5(6) and (7) of the Code, in deciding whether to grant Andrews' petition for a commutation hearing would diminish the opportunity for commutation available at the time the crime was committed, in violation of article I, section 18 of the Utah Constitution's ban on *ex post facto* laws. *See* Utah Const. art. I, § 18; *State v. Schreuder,* 726 P.2d 1215, 1218 (Utah 1986); *State v. Coleman,* 540 P.2d 953, 954 (Utah 1975); *cf. Dugger v. Williams,* 593 So.2d 180, 182 (Fla.1991) (decided under the Florida *ex post facto* provision). We think the result would be the same under the federal constitution. *See Akins v. Snow,* 922 F.2d 1558, 1561-65 (11th Cir.), *cert. denied sub nom. Snow v. Akins,* 501 U.S. 1260, 111 S.Ct. 2915, 115 L.Ed.2d 1079 (1991); *Watson v. Estelle,* 859 F.2d 105, 108-09 (9th Cir.1988), *vacated on other grounds,* 886 F.2d 1093 (9th Cir.1989); *Rodriguez v. United States Parole Comm'n,* 594 F.2d 170, 174-76 (7th Cir.1979); *Williams v. Dugger,* 566 So.2d 819, 820-21 (Fla.Ct.App.1990); *see also Miller v. Florida,* 482 U.S. 423, 433-35, 107 S.Ct. 2446, 2452-53, 96 L.Ed.2d 351 (1987). However, our interpretation of the Utah Constitution is not contingent upon the accuracy of our prediction of federal law. *See Michigan v. Long,* 463 U.S. 1032, 1044, 103 S.Ct. 3469, 3478, 77 L.Ed.2d 1201 (1983).

We cannot determine with certainty from the Board's orders of July 21, 1992, that the Board actually decided to deny Andrews' request for a commutation hearing because of the failure to satisfy the requirements of section 77-27- 5.5(6) and (7). The language used in one of the orders--"that the Petition and supporting documents fail to raise new and substantial issues"--appears to state the legal standard set by those sections as necessary prerequisites for the grant of a commutation hearing. *See* Utah Code Ann. § 77-27-5.5(6) & (7). Because it appears from the order that the Board was guided by the new statute's restrictions on the availability of a commutation hearing, and because it would be a denial of Andrews' constitutional rights to deny his petition based upon these newly enacted statutory criteria, the Board of Pardons is directed either to make clear that it has not followed the restrictive criteria set forth in section 77-27-5.5(6) and (7) or to reconsider the petition for a commutation hearing under the substantive criteria that existed in 1974. *See Rules and Regulations of Board of Pardons of the State of Utah,* ch. IV, § 4 (adopted Apr. 24, 1952, amended July 23, 1969, amended July 11, 1973).

[4] Finally, Andrews has supplemented his petition with a claim that the Board has failed to comply with the requirements of the Government Records Access and *794 Management Act, Utah Code Ann. §§ 63-2-101 to -909. Specifically, Andrews asked the Board on the 25th of July to provide him with all documents upon which it based its decision to deny him a hearing. He asks this court to direct the Board to comply with the Act. We agree that the Act does apply to the Board by its terms. *Id.* § 63-2-103(9)(a)(i). However, the Board has five business days within which to respond to a request under the Act. *Id.* § 63-2-204(3)(a). Since the time for a response has not yet run, and we have no basis for assuming that the Board will not comply with the Act's provisions, this matter is not yet ripe for adjudication. We therefore decline to order the relief requested by petitioner.

[5] Nothing in this order should be construed as requiring that the Board grant Andrews a new commutation hearing. The grant or denial of such a hearing is a matter committed to the sound discretion of the Board of Pardons, so long as that discretion is exercised consistent with the rules of the Board, the statutes of this state, and the Utah and federal constitutions. Utah Const. art. VII, § 12; *see Foote v. Utah Board of Pardons,* 808 P.2d 734, 735-45 (Utah 1991); *Andrews v. Haun,* 779 P.2d 229 (Utah), *cert. denied sub nom. Andrews v. Barnes,* 493 U.S. 945, 110 S.Ct. 354, 107 L.Ed.2d 341 (1989). We hold only that the Board appears to have complied with a statute that, as applied to Andrews, is violative of the Utah Constitution, and, independently, the federal constitution.

We deny the requested stay of execution. It is not clear that the Board cannot comply with the requirements of this opinion within the remaining period. If the Board feels that it needs additional time, it can request a stay.

DURHAM, J., concurs in the disposition of the petition, but dissents from the denial of the stay.

STEWART, J., dissents from the disposition of the petition and files a separate opinion, but concurs in the denial of the stay.

(dissenting opinion omitted).

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