

# THE OPEN BOOK

A handbook on open meetings & open records in Utah

2008



### **Acknowledgements:**

The Open Book contains information from the Handbook for the Utah Government Records Access and Management Act, Utah Media Law Handbook and Guide to Open Government, as well as advice from members of the Utah Attorney General's Office, Utah Foundation for Open Government and the Utah Headliners Chapter of the Society of Professional Journalists.

This handbook and all its contents are the sole responsibility of the Utah Attorney General's Office. All material is current as of March 2008.

## PREFACE

The Open Book is my commitment to the idea that open government is better government. The aim of this handbook is to assist both people seeking government records and the government workers who keep those records. The Open Book will also help people who want to attend government meetings and government officials in charge of meetings. The Open Book is only to be used as a quick reference. Laws change and you should check with the most current law if there is a dispute. It is my hope that The Open Book will help everyone make sure the public's business is conducted in public.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Mark Shurtleff', written in a cursive style.

Mark Shurtleff  
Utah Attorney General

# OPEN MEETINGS

A guide for policy makers & the public



# OPEN MEETINGS



## **WHAT DOES THE OPEN MEETINGS ACT LAW DO?**

It requires government officials to deliberate and take actions openly.

## **WHO HAS TO FOLLOW THE LAW?**

Any state administrative, advisory, executive or legislative body which:

- Consists of two or more persons
- Spends, distributes or is supported by tax money
- Has authority to make decisions about the public's business

This includes political subdivisions such as a city council, Public Service Commission, Board of Pardons and advisory committee.

## **WHO ISN'T AFFECTED BY THE LAW?**

- Political parties, groups and caucuses
- Legislative conference, rules and sifting committees
- Community councils

## **DOES THE LAW APPLY TO COURTS?**

The law does not apply directly to courts, but both the First Amendment and common law recognize that judicial proceedings are open to the public. The Utah Supreme Court has ruled that some “quasi-judicial” meetings may be open for “information gathering” and closed for “decision making.”

## **WHAT IS A MEETING?**

A meeting is defined as a quorum or simple majority of a public body meeting in person or through electronic equipment to discuss or act on a matter under its authority. A chance or social gathering of a public body is not considered a meeting.

## **WHAT MEETINGS ARE NOT COVERED BY THE LAW?**

A public body with both legislative and executive responsibilities, like a county commission meeting, in which no public funds are spent is not covered by the Open Meetings Act.

## **CAN A MEETING BE HELD WITHOUT PEOPLE BEING IN THE SAME ROOM?**

Yes. Government officials can meet by telephone, computer or other electronic devices. A public notice must be provided to describe how the members will be connected and how the public can attend or participate.

## **WHEN CAN A MEETING BE CLOSED TO THE PUBLIC?**

A meeting can only be closed to the public for the following purposes:

- Discussing an individual's character, professional competence, or physical or mental health
- Strategy sessions to discuss collective bargaining
- Strategy sessions to discuss pending or reasonably imminent litigation
- Strategy sessions to discuss the purchase, exchange, lease or sale of real property (a public notice of the terms of the sale must be given before the sale is approved)
- Discussions regarding security personnel, devices or systems
- Investigative proceedings regarding allegations of criminal misconduct

## HOW IS A MEETING CLOSED?

- Two-thirds of the body must vote to close the meeting
- The public body must hold an open meeting with public notice before closing a meeting
- The votes to close and the reason for closing must be recorded in the minutes

## DO SOME MEETINGS HAVE TO BE CLOSED?

No. Closing a meeting is always discretionary, not mandatory. The law does not require any meeting to be closed.

## WHAT IS FORBIDDEN DURING A CLOSED MEETING?

- Approving any ordinance, resolution, rule, regulation, contract or appointment
- Taking final action-final votes must be open and on the record
- Interviewing a person applying to fill an elected position

## HOW MUST THE PUBLIC BE NOTIFIED ABOUT A MEETING?

The law requires that a notice must be given at least 24 hours before the meeting, with the agenda, date, time and place. Notice can be provided in one of two ways:

- Posted as a written notice at the place where the meeting will be held
- Given to at least one local general circulation newspaper or local media correspondent

The law also requires public bodies which hold regular meetings over the year to give notice at least once each year of their annual schedule. The law also encourages posting meetings on the Internet as a supplement to the regular notice - beginning April 1, 2008, a notice must also be posted on the Utah Public Notice Website.

## **DOES THE LAW ALLOW ANY EXCEPTIONS TO GIVING NOTICE?**

Yes. An emergency meeting can be held if the majority of the body votes to consider matters of an “emergency or urgent manner.” The law still requires that the “best notice practicable” be given. Minutes from emergency meetings should include a statement of unforeseen circumstances that made the meeting necessary.

## **ARE MINUTES REQUIRED IN OPEN AND CLOSED MEETINGS?**

Yes. The minutes of both open and closed meetings must include the date, time and place of the meeting and the names of all members present or absent. In addition:

Minutes for an open meeting must include a summary of

- All matters proposed, discussed or decided
- Names and substance of information from individuals giving testimony
- Individual votes on each matter, and
- Additional information requested by a member

Minutes from a closed meeting must include

- Names of others present unless it infringes on the purpose of closing the meeting

## **ARE MINUTES PUBLIC RECORDS?**

Yes for open meetings and no for closed meetings. Minutes from open meetings must be made available within a reasonable amount of time.

## HOW IS THE OPEN MEETINGS LAW BROKEN?

- Closing a meeting without members voting first in an open meeting
- Closing a meeting for reasons not allowed by the law
- Taking official action during a closed meeting
- Failing to give public notice of a meeting

## WHAT HAPPENS IF SOMEONE BREAKS THE OPEN MEETINGS LAW?

- A court can void any action in violation of the law
- A violation can sometimes be “cured” by a subsequent meeting where the action is discussed and a vote is taken in public
- The law does not include punitive or deterrent penalties but it does allow for reasonable attorney fees and court costs

## WHO CAN ENFORCE THE LAW?

- The Attorney General
- A county attorney
- A private citizen who has been denied their rights under the law can file a lawsuit within 90 days, or within 30 days if it involves bonds, notes or debt

## WHO DETERMINES IF THE LAW WAS BROKEN?

A district court judge will privately review the tape recording or written minutes. If the judge doesn't find a violation, the case will be dismissed and the meeting information is not disclosed. If the judge finds a violation, all of the information pertinent to the portion of the meeting that was illegally closed will be made public.

## **WHAT SHOULD YOU DO IF YOU BELIEVE YOU HAVE BEEN ILLEGALLY KICKED OUT OF A MEETING?**

- Object to the closed meeting and request the objection be included in the minutes
- Ask the presiding official to state the reason for closing the meeting and to include the reason in the minutes
- Ask all meeting participants to vote on closing the meeting and have it included in the minutes
- Tell meeting participants that any action taken in violation of the Open Meetings Law may be void
- If the closed meeting is already in progress, deliver a written objection and have it included in the minutes

OPEN & PUBLIC  
MEETINGS ACT



# OPEN & PUBLIC MEETINGS ACT



52-4-101. Title. This chapter is known as the “Open and Public Meetings Act.”

52-4-102. Declaration of public policy. (1) The Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people’s business. (2) It is the intent of the Legislature that the state, its agencies, and its political subdivisions: (a) take their actions openly; and (b) conduct their deliberations openly. 52-4-103. Definitions. As used in this chapter: (1) “Anchor location” means the physical location from which: (a) an electronic meeting originates; or (b) the participants are connected.

(2) “Convening” means the calling of a meeting of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power. (3) “Electronic meeting” means a public meeting convened or conducted by means of a conference using electronic communications. (4) (a) “Meeting” means the convening of a public body, with a quorum present, including a workshop or an executive session whether the meeting is held in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power. (b) “Meeting” does not mean: (i) a chance meeting; (ii) a social meeting; or (iii) the convening of a public body that has both legislative and executive responsibilities where no public funds are appropriated for expenditure during the time the public body is convened and: (A) the public body is convened solely for the discussion or implementation of administrative or operational matters for which no formal action by the public body is required; or (B) the public body is convened solely for the discussion or implementation of administrative or operational matters that would not come before the public body for discussion or action. (5) “Monitor” means to hear or observe, live, by audio or video equipment, all of the public statements of each member of the public body who is participating in a meeting. (6) “Participate” means the ability to communicate with all of the members of a public body, either

verbally or electronically, so that each member of the public body can hear or observe the communication.(7) (a) “Public body” means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that: (i) is created by the Utah Constitution, statute, rule, ordinance, or resolution;(ii) consists of two or more persons; (iii) expends, disburses, or is supported in whole or in part by tax revenue; and(iv) is vested with the authority to make decisions regarding the public’s business. (b) “Public body” does not include a: (i) political party, political group, or political caucus; or (ii) conference committee, rules committee, or sifting committee of the Legislature.

(8) “Public statement” means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.(9) (a) “Quorum” means a simple majority of the membership of a public body, unless otherwise defined by applicable law. (b) “Quorum” does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power.(10) “Recording” means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.

52-4-104. Training.The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of this chapter

52-4-201. Meetings open to the public -- Exceptions.(1) A meeting is open to the public unless closed under Sections 52-4-204, 52-4-205, and 52-4-206.(2) (a) A meeting that is open to the public includes a workshop or an executive session of a public body in which a quorum is present, unless closed in accordance with this chapter. (b) A workshop or an executive session of a public body in which a quorum is present that is held on the same day as a regularly scheduled public meeting of the public body may only be held at the location where the public body is holding the regularly scheduled public meeting unless: (i) the workshop or executive session is held at the location where the public body holds its regularly scheduled public meetings but, for that day, the regularly scheduled public meeting is being held at different location; (ii) any of the meetings held on the same day is a site visit or a traveling tour and, in accordance with this chapter, public notice is given; (iii) the workshop or executive session is an electronic meeting conducted according to the requirements of Section 52-4-207; or (iv) it is not practicable to conduct the workshop or executive session at the regular location of the public body’s open meetings

due to an emergency or extraordinary circumstances.

52-4-201. Meetings open to the public -- Exceptions.(1) A meeting is open to the public unless closed under Sections 52-4-204, 52-4-205, and 52-4-206.(2) (a) A meeting that is open to the public includes a workshop or an executive session of a public body in which a quorum is present, unless closed in accordance with this chapter. (b) A workshop or an executive session of a public body in which a quorum is present that is held on the same day as a regularly scheduled public meeting of the public body may only be held at the location where the public body is holding the regularly scheduled public meeting unless: (i) the workshop or executive session is held at the location where the public body holds its regularly scheduled public meetings but, for that day, the regularly scheduled public meeting is being held at different location; (ii) any of the meetings held on the same day is a site visit or a traveling tour and, in accordance with this chapter, public notice is given; (iii) the workshop or executive session is an electronic meeting conducted according to the requirements of Section 52-4-207; or (iv) it is not practicable to conduct the workshop or executive session at the regular location of the public body's open meetings due to an emergency or extraordinary circumstances.

52-4-203. Minutes of open meetings -- Public records -- Recording of meetings.(1) Except as provided under Subsection (8), written minutes and a recording shall be kept of all open meetings.(2) Written minutes of an open meeting shall include: (a) the date, time, and place of the meeting; (b) the names of members present and absent; (c) the substance of all matters proposed, discussed, or decided by the public body which may include a summary of comments made by members of the public body; (d) a record, by individual member, of each vote taken by the public body; (e) the name of each person who is not a member of the public body, and upon recognition by the presiding member of the public body, provided testimony or comments to the public body; (f) the substance, in brief, of the testimony or comments provided by the public under Subsection (2)(e); and (g) any other information that any member requests be entered in the minutes or recording.

(3) A recording of an open meeting shall:(a) be a complete and unedited record of all open portions of the meeting from the commencement of the meeting through adjournment of the meeting; and (b) be properly labeled or identified with the date, time, and place of the meeting.(4) (a) The minutes and recordings of an open meeting are public records and shall be available within a reasonable time after the meeting. (b) An open meeting record kept only by a recording must be converted

to written minutes within a reasonable time upon request.(5) All or any part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting.(6) Minutes or recordings of an open meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.(7) Written minutes and recordings of open meetings are public records under Title 63, Chapter 2, Government Records Access and Management Act, but written minutes shall be the official record of action taken at the meeting.(8) Either written minutes or a recording shall be kept of: (a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken by the public body; and (b) an open meeting of a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or special service district under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, if the district's annual budgeted expenditures for all funds, excluding capital expenditures and debt service, are \$50,000 or less.

52-4-204. Closed meeting held upon vote of members -- Business -- Reasons for meeting recorded.(1) A closed meeting may be held: (a) if a quorum is present; and (b) if two-thirds of the members of the public body present at an open meeting for which notice is given under Section 52-4-202 vote to approve closing the meeting.(2) A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Section 52-4-205.(3) An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.(4) The following information shall be publicly announced and entered on the minutes of the open meeting at which the closed meeting was approved: (a) the reason or reasons for holding the closed meeting;(b) the location where the closed meeting will be held; and (c) the vote by name, of each member of the public body, either for or against the motion to hold the closed meeting.(5) Nothing in this chapter shall be construed to require any meeting to be closed to the public.

52-4-205. Purposes of closed meetings.(1) A closed meeting described under Section 52-4-204 may only be held for: (a) discussion of the character, professional competence, or physical or mental health of an individual; (b) strategy sessions to discuss collective bargaining; (c) strategy sessions to discuss pending or reasonably imminent litigation; (d) strategy sessions to discuss the purchase, exchange, or lease of real property if public discussion of the transaction would:(i) disclose the appraisal or estimated value of the property under consideration; or (ii) prevent the public body from completing the transaction on the best possible terms; (e) strategy sessions to discuss the sale of real property if: (i) public discussion of the transaction would: (A) disclose the appraisal or estimated value of the property under consider-

ation; or (B) prevent the public body from completing the transaction on the best possible terms; (ii) the public body previously gave public notice that the property would be offered for sale; and (iii) the terms of the sale are publicly disclosed before the public body approves the sale; (f) discussion regarding deployment of security personnel, devices, or systems; (g) investigative proceedings regarding allegations of criminal misconduct; and (h) discussion by a county legislative body of commercial information as defined in Section 59-1-404.(2) A public body may not interview a person applying to fill an elected position in a closed meeting.

52-4-206. Record of closed meetings.(1) Except as provided under Subsection (6), if a public body closes a meeting under Subsection 52-4-205(1), the public body: (a) shall make a recording of the closed portion of the meeting; and (b) may keep detailed written minutes that disclose the content of the closed portion of the meeting.

(2) A recording of a closed meeting shall be complete and unedited from the commencement of the closed meeting through adjournment of the closed meeting. (3) The recording and any minutes of a closed meeting shall include: (a) the date, time, and place of the meeting; (b) the names of members present and absent; and (c) the names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting. (4) Minutes or recordings of a closed meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.(5) Both a recording and written minutes of closed meetings are protected records under Title 63, Chapter 2, Government Records Access and Management Act, except that the records may be disclosed under a court order only as provided under Section 52-4-304.(6) If a public body closes a meeting exclusively for the purposes described under Subsection 52-4-205(1)(a) or Subsection 52-4-205(1)(f): (a) the person presiding shall sign a sworn statement affirming that the sole purpose for closing the meeting was to discuss the purposes described under Subsection 52-4-205(1)(a) or Subsection 52-4-205(1)(f); and (b) the provisions of Subsection (1) of this section do not apply.

52-4-207. Electronic meetings -- Authorization -- Requirements.(1) A public body may convene and conduct an electronic meeting in accordance with this section.(2) (a) A public body may not hold an electronic meeting unless the public body has adopted a resolution, rule, or ordinance governing the use of electronic meetings. (b) The resolution, rule, or ordinance may: (i) prohibit or limit electronic meetings based on budget, public policy, or logistical considerations; (ii) require a quorum

of the public body to: (A) be present at a single anchor location for the meeting; and (B) vote to approve establishment of an electronic meeting in order to include other members of the public body through an electronic connection; (iii) require a request for an electronic meeting to be made by a member of a public body up to three days prior to the meeting to allow for arrangements to be made for the electronic meeting; (iv) restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability; or (v) establish other procedures, limitations, or conditions governing electronic meetings not in conflict with this section. (3) A public body that convenes or conducts an electronic meeting shall: (a) give public notice of the meeting: (i) in accordance with Section 52-4-202; and (ii) post written notice at the anchor location; (b) in addition to giving public notice required by Subsection (3) (a), provide: (i) notice of the electronic meeting to the members of the public body at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present; and (ii) a description of how the members will be connected to the electronic meeting; (c) establish one or more anchor locations for the public meeting, at least one of which is in the building and political subdivision where the public body would normally meet if they were not holding an electronic meeting; (d) provide space and facilities at the anchor location so that interested persons and the public may attend and monitor the open portions of the meeting; and (e) if comments from the public will be accepted during the electronic meeting, provide space and facilities at the anchor location so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting. (4) Compliance with the provisions of this section by a public body constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.

52-4-208. Chance or social meetings. (1) This chapter does not apply to any chance meeting or a social meeting. (2) A chance meeting or social meeting may not be used to circumvent the provisions of this chapter.

52-4-301. Disruption of meetings. This chapter does not prohibit the removal of any person from a meeting, if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised. 52-4-302. Suit to void final action -- Limitation -- Exceptions. (1) (a) Any final action taken in violation of Section 52-4-201, 52-4-202, or 52-4-207 is voidable by a court of competent jurisdiction. (b) A court may not void a final action taken by a public body for failure to comply with the posting written notice requirements under Subsection 52-4-202(3)(a)(i)(B) if: (i) the public body otherwise complies with the provisions of Section 52-4-202; and (ii) the

failure was a result of unforeseen Internet hosting or communication technology failure.(2) Except as provided under Subsection (3), a suit to void final action shall be commenced within 90 days after the date of the action.(3) A suit to void final action concerning the issuance of bonds, notes, or other evidences of indebtedness shall be commenced within 30 days after the date of the action.

52-4-303. Enforcement of chapter -- Suit to compel compliance.(1) The attorney general and county attorneys of the state shall enforce this chapter.(2) The attorney general shall, on at least a yearly basis, provide notice to all public bodies that are subject to this chapter of any material changes to the requirements for the conduct of meetings under this chapter.(3) A person denied any right under this chapter may commence suit in a court of competent jurisdiction to:(a) compel compliance with or enjoin violations of this chapter; or(b) determine the chapter's applicability to discussions or decisions of a public body.(4) The court may award reasonable attorney fees and court costs to a successful plaintiff.

52-4-304. Action challenging closed meeting.(1) Notwithstanding the procedure established under Subsection 63-2-202(7), in any action brought under the authority of this chapter to challenge the legality of a closed meeting held by a public body, the court shall:(a) review the recording or written minutes of the closed meeting in camera; and (b) decide the legality of the closed meeting.(2) (a) If the judge determines that the public body did not violate Section 52-4-204, 52-4-205, or 52-4-206 regarding closed meetings, the judge shall dismiss the case without disclosing or revealing any information from the recording or minutes of the closed meeting. (b) If the judge determines that the public body violated Section 52-4-204, 52-4-205, or 52-4-206 regarding closed meetings, the judge shall publicly disclose or reveal from the recording or minutes of the closed meeting all information about the portion of the meeting that was illegally closed.

52-4-305. Criminal penalty for closed meeting violation.In addition to any other penalty under this chapter, a member of a public body who knowingly or intentionally violates or who knowingly or intentionally abets or advises a violation of any of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.

# OPEN RECORDS

A guide for policy makers & the public



# OPEN RECORDS



## **WHAT IS GRAMA?**

Utah passed the Government Records Access Management Act in 1991 to balance the public's right to know with the public's right to privacy. GRAMA promotes access and defines when privacy or security issues outweigh the public's right to know.

## **WHAT IS FOIA?**

The federal government's Freedom of Information Act is similar to Utah's GRAMA. Both balance the interest of the public and press with individual privacy and state or national security.

## **WHAT "RECORDS" ARE COVERED BY GRAMA?**

All records prepared, owned, received or retained by a government entity are included. These records must be able to be reproduced from the original. Records can include:

- Books
- Letters
- Documents
- Papers
- Maps
- Plans
- Photographs
- Films
- Cards
- Tapes, recordings, electronic data or other documentary material

## WHAT RECORDS ARE NOT COVERED BY GRAMA?

- Temporary drafts
- Daily calendars
- Personal notes
- Privately owned, copyrighted or patented material
- Notes or internal memoranda for judicial and quasi-judicial deliberations
- Proprietary software or computer programs
- Junk mail and commercial publications
- Books and other materials available in public libraries

## HOW MUCH WILL THE RECORDS COST?

The government cannot charge you for reviewing or inspecting a record. You can be charged a “reasonable fee” to cover copying costs. You may also be charged if staff time is needed to summarize, compile or tailor the record to meet your request. Here are the rules that apply:

- The extra charge can only be made if the information requested is in a different form or must be extracted from a larger document
- The records custodian can charge an hourly fee of the lowest paid employee with the skills and training needed to do the job
- The government agency may require past fees or future estimated fees before processing a request if the amount exceeds \$50

GRAMA does not require that fees be charged. The government is encouraged to provide copies without charge under the following conditions:

- The record benefits the public rather than an individual or business (journalists often fall in this category)
- The individual is the subject of the private or controlled record
- The individual’s legal rights are implicated and is financially unable to pay for the record

## **IS THE GOVERNMENT REQUIRED TO CREATE A RECORD?**

No. The government does not have to create a record in response to a request.

## **WHAT RECORDS ARE PUBLIC?**

All records are presumed to be public unless classified as “private,” “protected,” “controlled” or “limited.” Common public records include laws, police initial contact reports, police chronological logs, land and tax records and records about the gross compensation of public employees.

## **WHAT RECORDS ARE “PRIVATE”?**

Private records are generally available only to the subject of a record or legal guardian, including:

- Medical data
- Eligibility for unemployment or welfare benefits
- Information about an alleged violation of the rules of legislative ethics (these records become public when a legislator holds a public meeting to discuss the allegation)
- Utah Senate confirmation records on an individual’s character, professional competence, or physical or mental health (if the chair decides that releasing the records will interfere with the investigation or deprive the nominee of a fair hearing)
- Social Security numbers
- Individual library records
- Home addresses, telephone numbers and purely private information about government employees

## **CAN THE GOVERNMENT CHOOSE TO MAKE OTHER RECORDS PRIVATE?**

Yes. The records below may be classified as private. These records will only be released to the individual who is the subject of the record or a person authorized or

given permission to receive the records. Private records are also released through a court order or legislative subpoena.

- Performance evaluations or race, religion or disability records of a former or current employee or applicant
- Personal financial data unless classified as public
- Agency records that would conflict with fiduciary obligations
- Information deemed an unwarranted invasion of personal privacy
- Records received from other government agencies with the condition that they remain private

## **WHAT RECORDS ARE “CONTROLLED”?**

Controlled records contain medical, psychiatric or psychological information about a person. Utah law is now compatible with the federal Health Insurance Portability and Accountability ACT (HIPAA), which stringently protects health records. These records can be given to doctors, social workers, insurance providers and government health agencies with permission. These records can also be disclosed through a court order or legislative subpoena.

## **WHAT RECORDS ARE “PROTECTED”?**

Protected records include some government or business records that safeguard against threats to public safety, government security, commercial interests or the general function of government. Protected records may include:

- Trade secrets
- Commercial information that could cause unfair competition, interfere with a planned government action or injure the state economy
- Test questions and answers for license, employment or academic exams
- Information that would give a contract bidder unfair advantage
- Records identifying property the government is considering purchasing (public and government interests can be considered before documents are protected)
- Information that would endanger a person’s life or safety
- Information that would jeopardize the security of government property, programs or record keeping

- Records prepared by or for a government entity in anticipation of litigation that are not available through discovery
- Personal files of a legislator unless they include a notice of legislative action or policy
- Drafts, unless they are classified as public
- Transcripts, minutes or reports from a closed meeting
- The identity of a donor or potential donor to a government entity who requests anonymity
- Unpublished lecture notes, data, manuscripts, creative works in progress, scholarly correspondence and confidential research proposals at a public institute of education

Protected records are available to the person who submitted the record or has power of attorney or a notarized release to receive the record. Protected records can also be received by court orders and legislative subpoenas.

## **WHAT RECORDS ARE “LIMITED”?**

Limited records are controlled by statutes other than the GRAMA law. GRAMA does not alter or repeal other statutes that control specific types of records.

## **CAN GOVERNMENT AGENCIES SHARE NON-PUBLIC RECORDS WITH OTHER GOVERNMENT AGENCIES?**

Yes. A government agency shall provide private, controlled or protected records with another government agency entitled by law to the record. A government agency may also provide private, controlled or protected records to another government agency if that agency:

- Archives records for historical preservation, administrative maintenance or destruction
- Enforces, litigates or investigates civil, criminal or administrative law
- Conducts an audit
- Collects information for presentence, probationary or parole purposes

## **WHAT RECORDS CAN NEVER BE SHARED WITH A GOVERNMENT AGENCY?**

- Tax records held by the Utah State Tax Commission
- Personal records held by the Utah Division of Oil, Gas and Mining
- Records of publicly funded libraries

## **CAN I ALLOW ANOTHER PERSON TO LOOK AT MY RESTRICTED INFORMATION?**

Yes. You can sign a “Consent for the Release of Information to a Third Party.” This means you are giving up your right to privacy in order for another person to look at your restricted records.

## **WHEN DOES A RECORD HAVE TO BE CLASSIFIED?**

A government agency does not have to classify a document until it is requested. Government agencies are encouraged to classify private, controlled or protected records as soon as possible to encourage compliance and so penalties can apply.

## **WHO OWNS THE RECORDS?**

All records created or maintained by a government entity are the property of the state.

## **HOW LONG MUST RECORDS BE KEPT?**

The chief administrative officer of each governmental entity must send a retention schedule to archives indicating how long the records will be kept.

## **HOW DO I OBTAIN A RECORD?**

Find the person who is responsible for the record. You can ask for the record orally or make a written request so that GRAMA response deadlines and appeals apply. The written request should include your name, mailing address, daytime phone number and a reasonable description of the record.

## HOW SOON CAN I GET A RECORD?

Government entities are encouraged to offer records as soon as possible. Generally the request must be answered within 10 business days. However, if you can show a quick response will benefit the public then the request must be handled within five business days. A journalist is entitled to a quick response. The government entity can respond in four ways:

- Approve the request and provide the record
- Deny the request
- Notify the requestor that the agency does not maintain the record and direct the person to the proper agency
- Notify the requestor that an approval or denial cannot be given immediately and provide a date when the records will be available

## WHAT HAPPENS IF THE GOVERNMENT DOESN'T UNDERSTAND MY REQUEST?

The government should attempt to contact the person to clarify what is being requested. The request can be denied if it is not reasonably specific.

## WHAT CAN SLOW DOWN MY REQUEST FOR A RECORD?

The government can deny providing records during the GRAMA deadline under these conditions:

- Another government agency is using the record and it would impair that agency's work or completion of an audit
- The request involves reviewing a large number of records or the agency is processing other large requests (the agency must still give an estimated due date)
- Legal counsel is needed to review the release (agency is given an extra 5 days)
- Extensive editing is needed to segregate the requested information (records should still be received within 15 days of the request)
- Segregation requires computer programming (should be completed as soon as possible)

## WHAT HAPPENS IF I DON'T GET A RESPONSE?

A failure to respond is the same as a denial and you are eligible to file an appeal.

## HOW DO I APPEAL?

An appeal must be given to the agency's chief administrative officer or designee within 30 days. The right to appeal is lost if it is not done within that time frame. The appeal should include your name, address, telephone number and what you are seeking. You may also want to include a brief explanation of the facts, reasoning and legal authority for your request. The agency head must make a determination within five business days after receiving a notice of appeal.

## WHAT IF MY APPEAL IS DENIED?

A secondary appeal can be made to the State Records Committee or district court. If a local government has its own GRAMA ordinance or policy, the local governing body generally will hear the appeals. If the State Records Committee or local records review panel rejects an appeal then it can be appealed to a district court.

## WHAT HAPPENS IF THE GRAMA LAW IS BROKEN?

Violating the GRAMA law is a class B misdemeanor under the following conditions:

- Intentionally disclosing a private, controlled or protected record
- Gaining a private, controlled or protected record by false pretenses, bribery or theft
- Intentionally refusing to release a required record
- Falsifying or making a false alteration to a government record

Violating the GRAMA law can bring stiffer penalties under the following conditions:

- Stealing, destroying or mutilating public records by a custodian is a third degree felony

- Stealing, destroying or mutilating public records by a non-custodian is a class A misdemeanor
- Recording false or forged documents is a third degree felony
- Fraudulently altering a proposed or enrolled legislative bill is a third degree felony

A government agency can also take disciplinary action against any employee who intentionally violates GRAMA. If the matter goes to court a judge may require the government agency to pay legal fees. Attorney fees may not be awarded for administrative hearings.

## **IS THERE ANY DEFENSE FOR VIOLATING GRAMA?**

- Whistleblower defense: the person believes the information is necessary to expose government corruption, abuse of office or misappropriation of public funds or property
- Improper classification: the person releases information that could have lawfully been released if it was properly classified.

## **WHERE CAN I FIND HELPFUL WEB SITES ON OPEN RECORDS AND OPEN MEETINGS?**

Utah Attorney General's Office-GRAMA

<http://www.attorneygeneral.utah.gov>

Utah State Archives:

<http://archives.utah.gov/main/>

U.S. Department of Justice-Freedom of Information Act

<http://www.usdoj.gov/oip/index.html>

Society of Professional Journalists-Freedom of Information

<http://www.spj.org/foi.asp>

UTAH GOVERNMENT  
RECORDS REQUEST FORM



This form can be found on the Attorney General Web Site:  
[www.attorneygeneral.utah.gov](http://www.attorneygeneral.utah.gov)

**UTAH GOVERNMENT RECORDS REQUEST FORM**

Fill out form, print and reset.

**TO:** \_\_\_\_\_  
 (Name of government office holding the records and/or name of agency contact person.)

**Address of government office:** \_\_\_\_\_

**Description of records sought (records must be described with reasonable specificity):**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- I would like to inspect (view) the records.
- I would like to receive a copy of the records. I understand that I may be responsible for fees associated with copying charges or research charges as permitted by UCA 63-2-203. I authorize costs of up to \$ \_\_\_\_\_
- UCA 63-2-203 (4) encourages agencies to fulfill a records request without charge. Based on UCA 63-2-203 (4), I am requesting a waiver of copy costs because:

releasing the record primarily benefits the public rather than a person. Please explain:  
 \_\_\_\_\_  
 \_\_\_\_\_

- I am the subject of the record.
- I am the authorized representative of the subject of the record.
- My legal rights are directly affected by the record and I am impoverished.  
 (Please attach information supporting your request for a waiver of the fees.)

If the requested records are not public, please explain why you believe you are entitled to access.

- 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. Documentation required by UCA 63-2-202, is attached.
- Other. Please explain:  
 \_\_\_\_\_  
 \_\_\_\_\_

I am requesting expedited response as permitted by UCA 63-2-204 (3)(b). (Please attach information that shows your status as a member of the media and a statement that the records are required for a story for broadcast or publication; or other information that demonstrates that you are entitled to expedited response.)

**Requester's Name:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**Daytime telephone number:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

UTAH ATTORNEY GENERAL'S OFFICE  
PO BOX 142320  
SALT LAKE CITY, UT 84114-2320  
(801) 538-9600