

Government Records Access and Management Act (GRAMA)

Overview of Title 63, Chapter 2 Utah Code Annotated



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Parts of Title 63, Chapter 2 Utah Code Annotated

- **Part 1 General Provisions**
- **Part 2 Access to Records**
- **Part 3 Classification**
- **Part 4 Appeals**
- **Part 5 State Records Committee**
- **Part 6 Accuracy of Records**
- **Part 7 Applicability to Political Subdivisions, the Judiciary, and the Legislature**
- **Part 8 Remedies**
- **Part 9 Archives and Records Service**
- **Part 10 Public Associations**



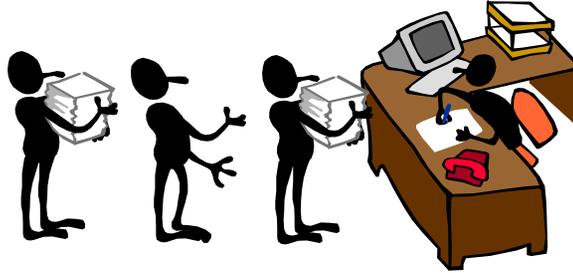
Legislative Intent of GRAMA

- **The Legislature recognizes:**
 - ★ **“The public's right of access to information concerning the conduct of the public's business”**
 - ★ **“The right of privacy in relation to personal data gathered by governmental entities”**
 - ★ **“A public policy interest in allowing government to restrict access to certain records for the public good”**

Legislative Intent of GRAMA – continued

- **The intent of the Legislature is to:**
 - ★ **Promote the public's right of easy and reasonable access;**
 - ★ **Specify conditions when access restrictions may outweigh the public's interest in access;**
 - ★ **Prevent abuse of confidentiality by governmental entities by specifying its use;**
 - ★ **Provide guidelines for both:**
 - **Disclosure of government records; and**
 - **Restrictions on access to government records;**
 - ★ **Favor public access when in doubt; and**
 - ★ **Establish fair and reasonable records management practices.**

Does GRAMA apply?



- **Record of a government entity**
 - ★ **Government entity defined by statute**
- **Limited application for certain entities**
(must substantially comply)
 - ★ **Legislature**
 - ★ **Judiciary**
 - ★ **Political subdivisions**
 - **May adopt own ordinance**

What is a record?

- **“Record” means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics that is:**
 - ★ **prepared, owned, received, or retained by government; and**
 - ★ **reproducible by mechanical/electronic means.**

What is a record? – continued

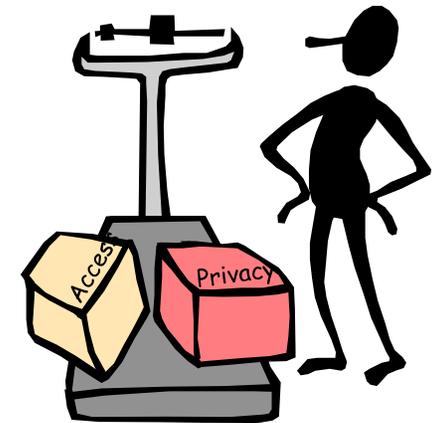
- **“Record” does not mean:**
 - ★ **certain temporary drafts;**
 - ★ **materials legally owned in an individual’s private capacity;**
 - ★ **certain copyrighted or patented material;**
 - ★ **proprietary software;**
 - ★ **junk mail/commercial publications;**
 - ★ **materials contained in public libraries;**
 - ★ **daily calendars and other personal notes;**
 - ★ **computer programs; or**
 - ★ **notes or internal memoranda prepared as part of a deliberative process for judicial or quasi-judicial functions.**

Source: Utah Code Ann. § 63-2-103

Prepared by the Office of Legislative Research and General Counsel – March 2005

Four Record Classifications

- **Public**
- **Private**
- **Controlled**
- **Protected**



Other laws
may also
restrict access



Four Record Classifications – continued

- **“Public record”** – a record that is not private, controlled, or protected and that is not exempt from disclosure by court rule or state or federal law, etc.
- **“Private record”** – a record with data on individuals e.g. – eligibility for unemployment, social services, or welfare benefits; medical history; employment records disclosing a home address, home phone number, or Social Security number, etc (certain exceptions apply).
- **“Controlled record”** – a properly classified record with data on individuals that contains medical or psychological data the release of which would be:
 - ★ detrimental to the subject of the record’s mental health or to the safety of any individual; or
 - ★ a violation of normal professional practice and medical ethics.
- **“Protected record”** – a properly classified record that may include trade secrets, information that may result in an unfair competitive injury or a competitive advantage if disclosed, information that if disclosed would jeopardize life, safety, or security, etc.

Source: Utah Code Ann. §§ 63-2-103, 63-2-302, 63-2-303, and 63-2-304

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Disclosure of a Record by Classification

- **Public** – Every person has right to inspect a public record free of charge and take a copy during normal working hours subject to certain fees and certain request requirements (time periods).
- **Private** – The subject of the record, parent, legal guardian, a person with power of attorney, or a person authorized by the subject of the record or by a court may obtain a private record.
- **Controlled** – A physician, psychologist, certified social worker, insurance provider, or government health agency may obtain a controlled record with a release from the subject of the record or by a court order.
- **Protected** – The person who submitted the record, a person with power of attorney or notarized release from all persons with an interest in the protection, or a person authorized by a court order may obtain a protected record.

Fees for Disclosure of a Record

- **A governmental entity may charge a reasonable fee to cover the actual cost of duplicating a record.**
- **If the record must be compiled in form not normally maintained by the governmental entity, actual cost may include:**
 - ★ **Staff time for compiling the record to meet the request**
(no charge for the first 15 minutes and not more than the lowest salary paid to an employee qualified to perform the request); and
 - ★ **The actual incremental cost of providing electronic services and formatting for the requestor.**
- **No charge is encouraged when:**
 - ★ **Release of the record primarily benefits the public;**
 - ★ **The requestor is the subject of the record; or**
 - ★ **The requestor's legal rights are implicated and the requestor is poor.**
- **No charge is allowed when:**
 - ★ **Reviewing a record to determine whether it is subject to disclosure; or**
 - ★ **Inspecting a record.**

Format of a Record



Compiled Information

- **A governmental entity:**
 - ★ **Is not required to:**
 - create a record in response to a request
 - fulfill a request if it unreasonably duplicates prior records requested from the same person
 - ★ **Shall provide the 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 for the governmental entity's costs in providing the record in the requested format

Format of a Record

Compiled Information Related issues

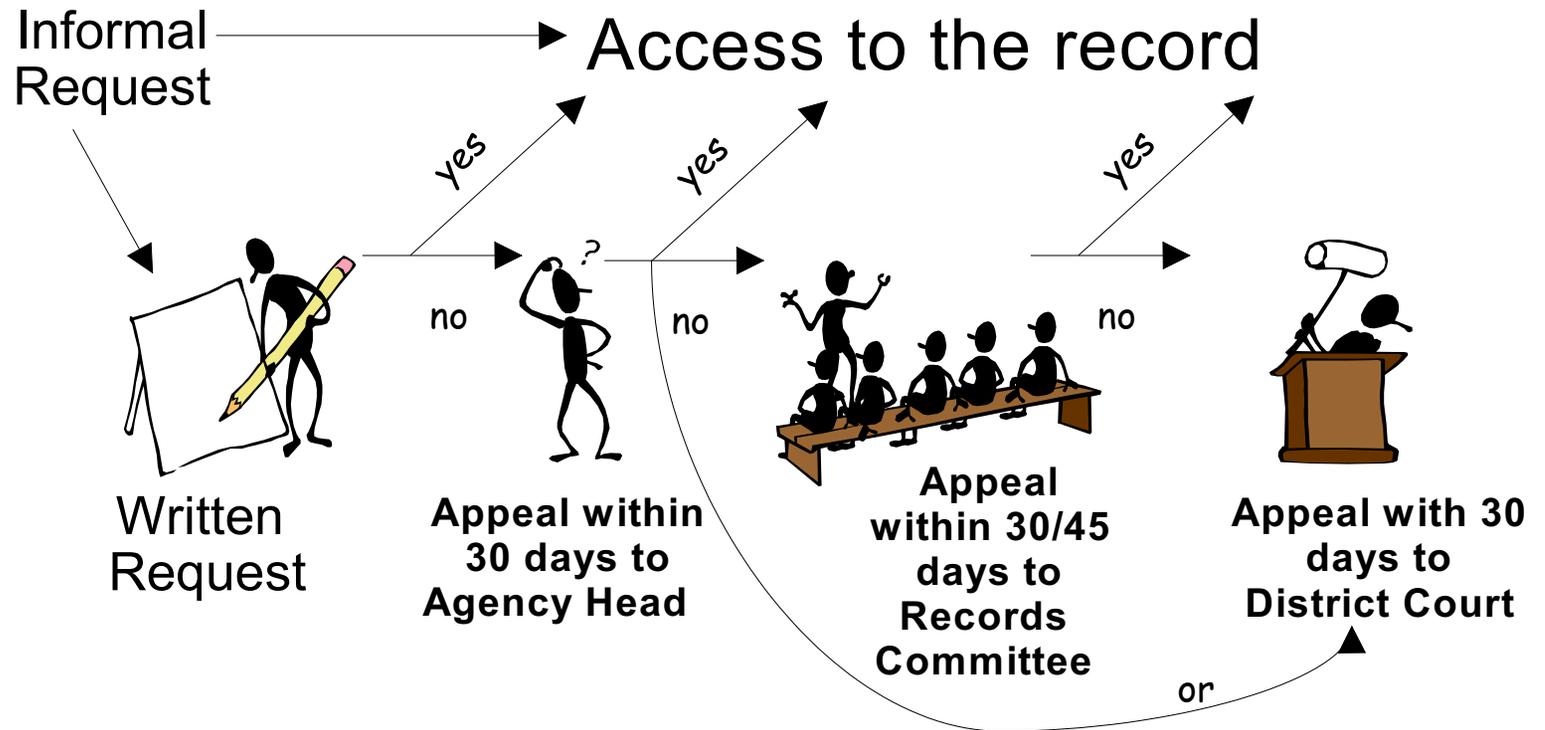


- **Physical form in which a record is stored may not limit inspection/copying**
- **If request is for copies of more than 50 pages contained in files the entity may require the requestor to make the copies**
- **Some protection of government owned intellectual property rights**
- **Segregating information**

Request for a Record

- **The person making the request shall furnish a written request which includes:**
 - ★ **The requestor's name, mailing address, and daytime phone number;**
 - ★ **A description of the records with reasonable specificity.**
- **A government entity must specify where and to whom the request is to be directed**
- **A government entity shall respond to the request as soon as reasonably possible:**
 - ★ **No later than**
 - **10 business days after receipt of the request; or**
 - **5 business days if the requester shows that an expedited response benefits the public (as for a story for publication or broadcast to the general public)**
 - ★ **By approving the request and providing the record;**
 - ★ **Denying the request; or**
 - ★ **Notifying the requestor that:**
 - **The government entity does not maintain the record (and, if known, who does); or**
 - **Extraordinary circumstances exist that cause additional delay in approving or denying the request (i.e. record is in use, record is part of an audit, request is voluminous, large number of requests are being precessed, etc.)**

Access and Appeals Process



Source: Utah Code Ann. § 63-2-401, 63-2-402, 63-2-403, and 63-2-404

A political subdivision's appeal process may differ if the political subdivision has adopted its own ordinance.

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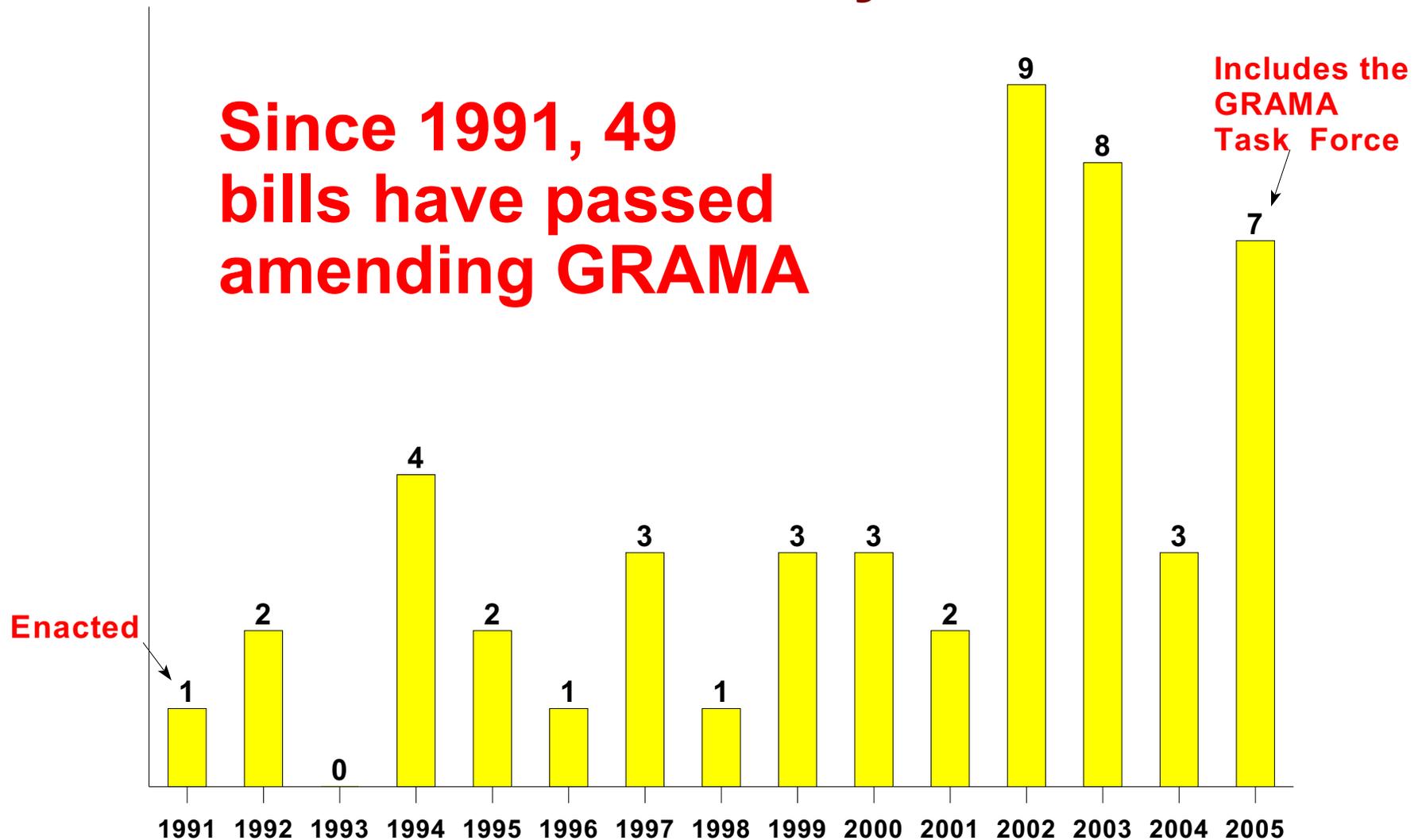
State Records Committee

- **Seven members**
 - ★ Individual from the private sector who manages records that would be private or controlled if created by a governmental entity
 - ★ State auditor or designee
 - ★ Director of the Division of State History or designee
 - ★ The governor or designee
 - ★ Citizen member
 - ★ Elected official representing political subdivisions
 - ★ Individual representing the news media
- **Appointed by the governor with the consent of the Senate for four year terms (excluding specified members)**
- **Duties:**
 - ★ Shall review and approve retention and disposal of records
 - ★ Shall hear appeals from determinations of access
 - ★ May order reassignment of classification and designation for any record series by a governmental entity if inconsistent with this chapter
- **Division of Archives and Records Service shall provide staffing for the committee**

Legislative History of GRAMA

Bills Passed by Year

Since 1991, 49 bills have passed amending GRAMA



End of Slides