

Potential GRAMA and Electronic Messaging Principles

GRAMA Task Force – June 14, 2005

	Potential Principle	Related Information	Discussion Ideas	Notes/References
1	The <u>content</u> not the physical form, electronic or otherwise of the material determines its status as a record subject to potential disclosure	Provided under current Utah law and common among similar state records access laws	The practical implications of: <ul style="list-style-type: none"> • the volume of emails and other electronic messages • useful and non-useful email and • training personnel 	§ 63-2-201(11) Utah Code Annotated 1953
2	All material received or prepared "<u>in connection with the transaction of public business is a record</u>" subject to potential disclosure	The Florida Supreme Court has ruled that " <i>a public record is any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.</i> "	▶ Would clarifying the definition of a record like Colorado and Florida be helpful?	<ul style="list-style-type: none"> • Colorado Revised Statutes 24-80-101 • Shevin v. Byron, et al., 379 So. 2d 633, 640 (Fla. 1980)
3	Material received or prepared for <u>personal use</u> is not considered a government record	These materials are " <i>not prepared in connection with official agency business.</i> "	▶ Would clarifying the definition of a record in this way be helpful?	<ul style="list-style-type: none"> • <i>See Shevin v. Byron, et al., 379 So. 2d at 640</i>(Fla. 1980) • GRAMA's exclusions to definition of record: § 63-2-103(20)(b)(i), (ii), & (viii) • Protected status for personal communications of legislator: § 63-2-304(19)

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4	"<u>Transitory</u>" material (i.e. many electronic messages) has only communicative or administrative value and loses that value upon receipt by the addressee	<ul style="list-style-type: none"> ▶ Transitory material are messages with short-lived administrative value and may include many email messages, voice mail, post-it notes, and written telephone messages ▶ Unnecessary retention of useless information, could inhibit the use and manageability of electronic messages and limit the public's ability to access useful public records 	<ul style="list-style-type: none"> ▶ Do existing definitions under GRAMA adequately address transitory material in general? ▶ Should transitory material be classified as: <ul style="list-style-type: none"> • a record under GRAMA, • a new record subcategory or definition, or • a non-record under GRAMA? 	<ul style="list-style-type: none"> • Florida Department of State Electronic Email Opinion, November 9, 1995 • GRAMA's exclusion of temporary drafts, library materials, and junk mail from the definition of record: § 63-2-103(20)(b)(i) & (v)-(viii)
5	Material used to <u>perpetuate or formalize knowledge</u> should be retain as a record subject to potential disclosure.	<p>The Supreme Court of Florida has established a definition of "public records" that is based on the three basic administrative purposes for which records are maintained including the:</p> <ul style="list-style-type: none"> • perpetuation, • communication, or • formalization of knowledge. 	<ul style="list-style-type: none"> ▶ Would clarifying the definition of a record in this way be helpful? ▶ An email attachment of a document may be an indication that the sender intended to "formalize" or "perpetuate" knowledge making the email less likely be considered "transitory" 	<p>See Florida Shevin v. Byron, et al., 379 So. 2d 633, 640</p>
6	<u>Email communications between government entities/elected officials and citizens/constituents</u> may be considered confidential by the sender. Such communications may also be voluminous or duplicative.	<p>Various approaches have been taken by other states.</p> <ul style="list-style-type: none"> • Colorado: email is not a record if the sender considers it to be private communication or if it is work product • New Jersey: no email communication from a person within the state is a record 	<ul style="list-style-type: none"> ▶ What expectation of privacy should a citizen have to address elected officials/government? ▶ How will any policy effect the willingness of the public to participate in government? ▶ Should citizen/ constituent email correspondence to government be considered a record subject to a retention schedule? ▶ If so, what limitations on disclosure should apply? 	<p>See Colorado, New Jersey, Rhode Island, and Texas</p>