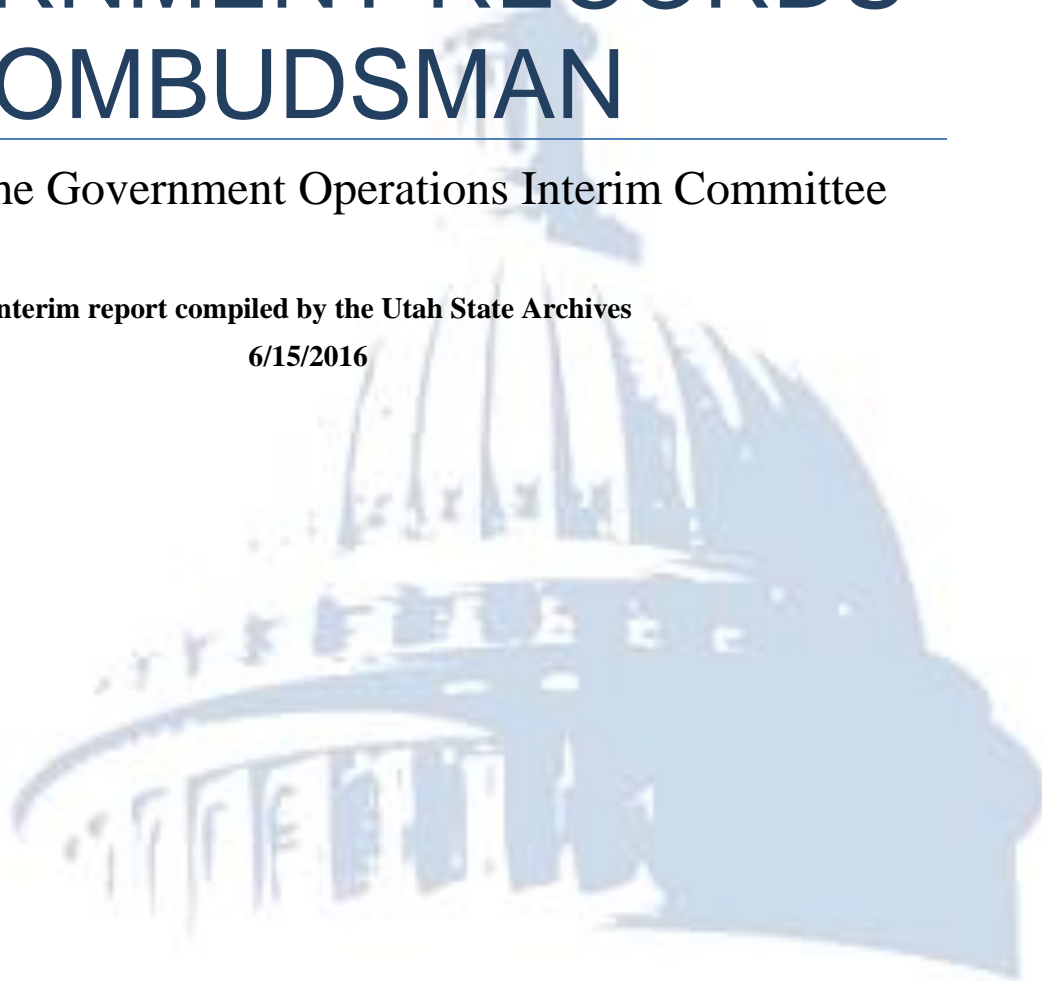


GOVERNMENT RECORDS OMBUDSMAN

Presented to the Government Operations Interim Committee

Interim report compiled by the Utah State Archives

6/15/2016



This report is required by Utah Code 63A-12-111, Public Records Management Act, Government Records Ombudsman.



Government Records Ombudsman

Department of Administrative Services

Utah State Archives

June 15, 2016

This report covers the work of the Government Records Ombudsman for the first eleven months of fiscal year 2015-2016, including July 1, 2015, to May 31, 2016. The Government Records Ombudsman acts as a resource for government employees who are responding to GRAMA requests and for persons who are requesting records or appealing denial of requests for records or for fee waivers. The Government Records Ombudsman is authorized to mediate disputes between requesters and responders. These responsibilities are defined in [Utah Code 63A-12-111](#).

The Utah Legislature created the position of Ombudsman in 2012. At that time, Rosemary Cundiff was appointed government records ombudsman. Each year since 2012, the workload of this position has increased. During the 2015-2016 fiscal year, Nova Dubovik, Executive Secretary for the State Records Committee, has assisted the Ombudsman by providing training about GRAMA. Nova also schedules hearings and provides support to the State Records Committee, and assists parties with the appeals process.

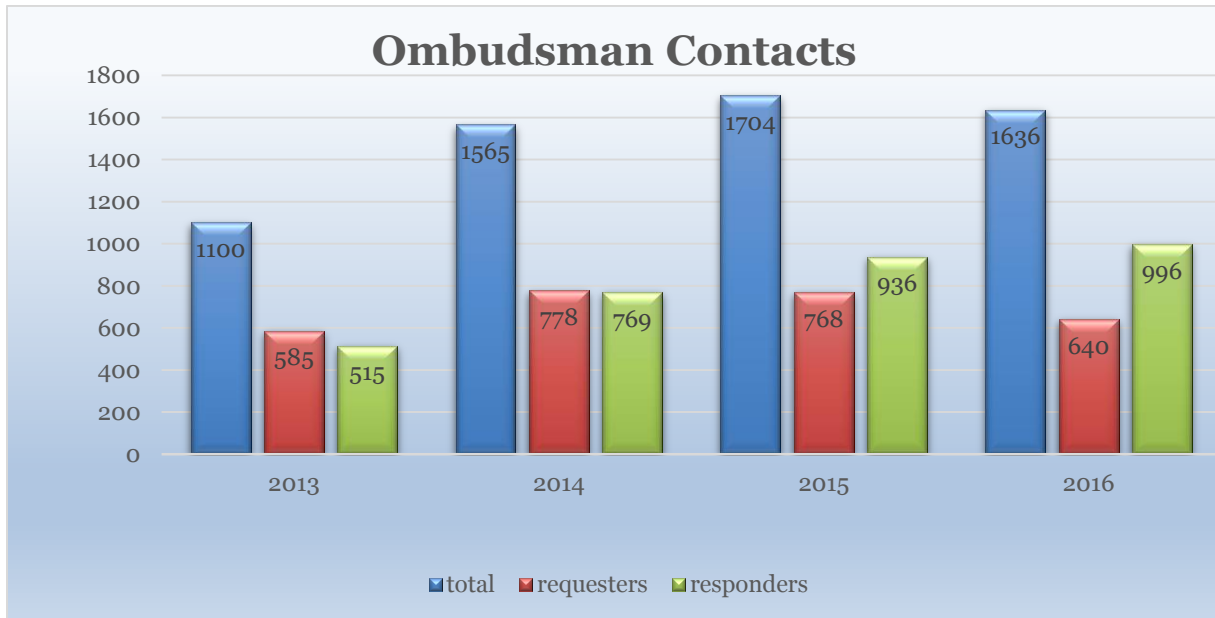
Activities and Services

During the first eleven months of fiscal year 2015-2016 the Government Records Ombudsman provided **1,636** consultations, including mail, email, telephone, or in-person assistance about issues relating to records access or mediation. Of these **640** involved requesters (the public, the media, and other entities) and **996** involved responders who are employees of Utah governmental entities. If the pattern continues through the end of the 2015- 2016 fiscal year, the total number of consultations will exceed any previous year. However, the number of consultations with requesters has decreased compared to the past two years, while the number of consultations with government responders continues to increase.

The Ombudsman is a valuable resource for both requesters and responders who need help understanding the Government Records Access and Management Act (GRAMA) who want a

sounding board for discussion, or who want to participate in mediation. Although, not specifically identified in the numbers reported, the Ombudsman notes an increase in calls from government legal counsel.

The following graph shows trends in Ombudsman contacts over the four years of the Ombudsman’s appointment:



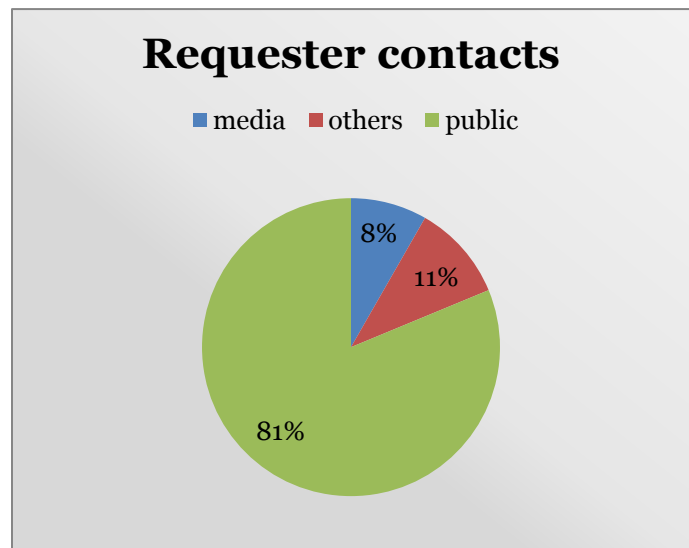
The Government Records Ombudsman, with the help from State Records Committee Executive Secretary, has provided training about GRAMA at the Archives and in various venues around the state. This training reached 570 individuals. In addition, the Archives hosted an all-day seminar, “A Day with GRAMA,” which was attended by 323 participants.

The Ombudsman is involved in an advisory capacity with the ongoing development of the Open Records Portal, which is a central location from which the public will be able to make GRAMA requests to all governmental entities. On January 1, 2016, the portal opened for municipalities, counties, and schools, with special districts to follow in 2017

The Ombudsman website has been updated. [Navigating the Appeals Process](#) (to include 2015 changes) and [Classifying Drafts](#) recently were added to the website.

Statistics about Contacts

REQUESTERS: During the first eleven months of fiscal year 2015-2016, the Government Records Ombudsman provided **640** consultations with records requesters. Of these, **520** were members of the public (81 percent), **53** were representatives of the media (8 percent), and **67** represented corporations, non-profits, out-of-state governments, or other entities (11 percent). The following graph displays public requester contacts in percentages:



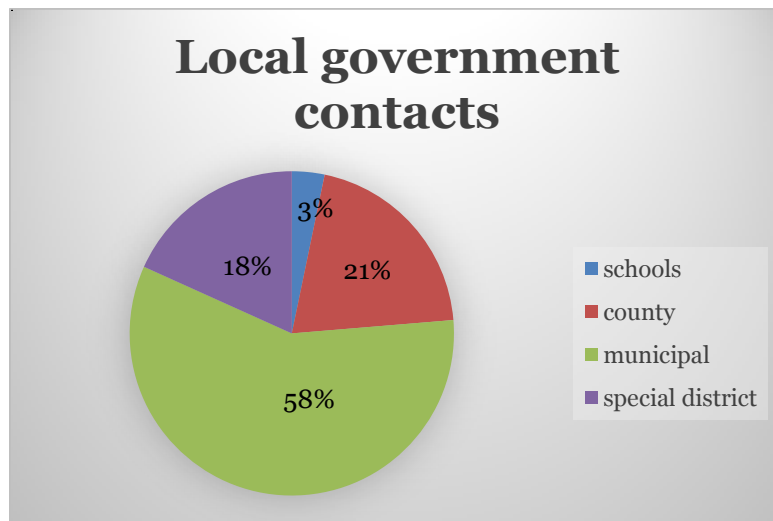
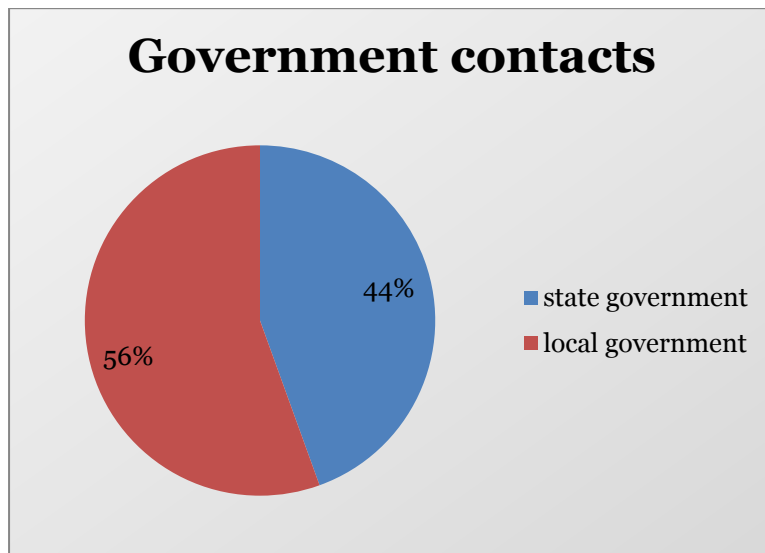
RESPONDERS: During the first eleven months of fiscal year 2015-2016 the Government Records Ombudsman provided **996** consultations with government employees. Of these **443** represented state government (44 percent) and **553** represented local governmental entities (56 percent).

LOCAL GOVERNMENT RESPONDERS: In local government **321** consultations were with municipalities (58 percent), **113** were with counties (21 percent), **68** were with special districts (13 percent), and **38** were with school districts (7 percent).

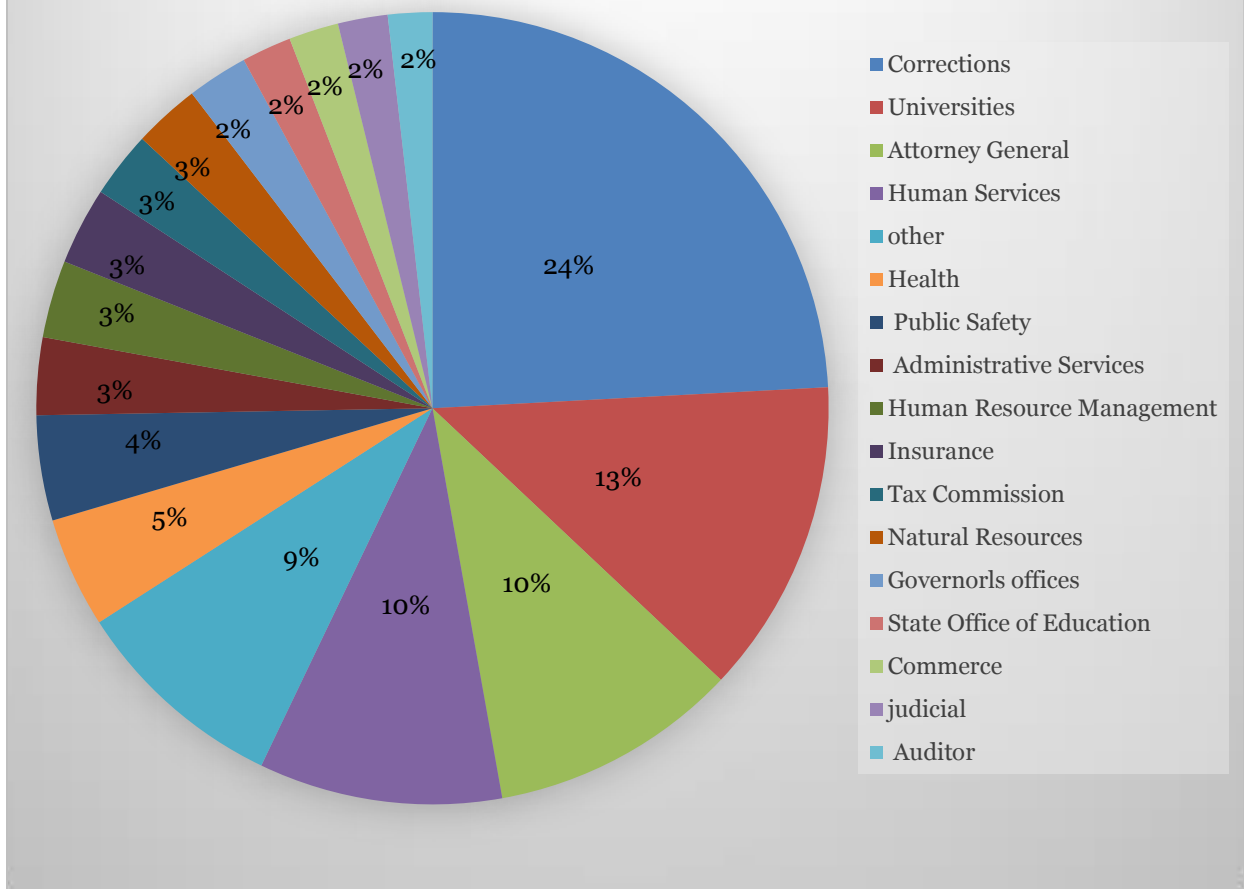
STATE GOVERNMENT RESPONDERS: The **443** consultations with state government included 30 different state agencies. Of these the most frequent consultations were with the Department of Corrections (24 percent), Universities and the Board of Regents (13 percent), the Department of Human Resources and the Attorney General's Office (10 percent each), and the Health Department (5 percent).

¹ Others means corporations, interest groups, non-profits, and out-of-state government

The following graphs display categories of government responder contacts in percentages, but what these percentages say only indirectly is that law enforcement agencies are the most frequent contacts for the Government Records Ombudsman, and incarcerated individuals and others who are seeking law enforcement records are among the most likely requesters.



State Government Contacts



Mediation

During the first eleven months of fiscal year 2015-2016, the Government Records Ombudsman facilitated mediation between parties over records access disagreements. Of 36 mediations, 20 were resolved and 14 progressed to the State Records Committee. The outcome of 2 more remains pending. The following table displays mediation by type of entity and type of record or issue in dispute. This represents a 33 percent increase over last year in attempted mediation. Increased mediation parallels an increase in appeals before the State Records Committee.

| | Entities | Topic | Outcome |
|----|---------------------------------|--------------------------------|-----------------------|
| 1 | Public/state government | email | Moved to SRC |
| 2 | Public/state government | AP&P criminal history records | Resolved in mediation |
| 3 | Public/housing authority | contracts | Moved to SRC |
| 4 | Media/municipality | Employee resignation letter | Resolved in mediation |
| 5 | Public/municipality | Photographs | Resolved in mediation |
| 6 | Public/municipality | Internal investigation | Resolved in mediation |
| 7 | Corporation/state government | Personal contact information | Resolved in mediation |
| 8 | Public/university | Employee compensation records | Resolved in mediation |
| 9 | Public/county | Law enforcement records | Resolved in mediation |
| 10 | public/special district | Video surveillance footage | Resolved in mediation |
| 11 | Public/state government | Human services case file | Moved to SRC |
| 12 | Public/municipality | Complaint file | Resolved in mediation |
| 13 | Public/municipality | Initial contact report | Moved to SRC |
| 14 | Public/municipality | Dash camera video | Moved to SRC |
| 15 | Public/county | Employee contact and more | Moved to SRC |
| 16 | Public/state government | Internal investigation | Resolved in mediation |
| 17 | Media/university | Student information | Moved to SRC |
| 18 | Public/state government | Government grant records | Resolved in mediation |
| 19 | Public/state government | DNA test results | Moved to SRC |
| 20 | Public/special district | Policies, email, research data | Resolved in mediation |
| 21 | Public/special district | Video surveillance footage | Resolved in mediation |
| 22 | Media/municipality | fees | Resolved in mediation |
| 23 | Public/municipality | Attorney communications | Moved to SRC |
| 24 | Interest group/special district | Repayment plan | Moved to SRC |
| 25 | Public/state government | Personnel records | Resolved in mediation |
| 26 | Public/state government | Electronic health data | Moved to SRC |
| 27 | Public/state government | Policies | Resolved in mediation |
| 28 | Public/municipality | Hiring records | Moved to SRC |
| 29 | Public/county | Initial contact report | Resolved in mediation |
| 30 | Public/special district | Financial records | Resolved in mediation |
| 31 | Public/state government | Email | Pending |
| 32 | Public/municipality | Email | Moved to SRC |
| 33 | Public/university | Email and medical records | Moved to SRC |
| 34 | Public/state government | Informant information | Pending |
| 35 | Media/municipality | Police report | Resolved in mediation |
| 36 | Public/county | Criminal records | Resolved in mediation |

| | |
|-----------------------------|----|
| Total resolved in mediation | 20 |
| Total moved to SRC | 14 |

Ombudsman's Observations about GRAMA

The Ombudsman discusses records access issues with both the public and government employees on a daily basis. Based on this experience, the Ombudsman makes the following observations about GRAMA and its application. This law has many nuances, but overall is well crafted and has served the State well for more than twenty years. As with all Legislation, changes incident to time require Legislative review in order to keep laws current and serviceable. The following issues are noted:

CLASSIFICATION ISSUES: As needs have been identified, changes and additions have been made to the lists of protected, private, and public records. The law is crafted to provide discretion in classifying information not specifically contemplated in the law. However, a few classification questions come up repeatedly. Perhaps foremost is a question about the privacy of juvenile records. Law enforcement agencies typically restrict access to the names of juveniles in law enforcement records. GRAMA makes no mention of privacy based on juvenile status.

ACCESS ISSUES:

Changing technology has complicated some components of access. Processes that worked for paper are less effective for electronic records. The following are some examples from Section 63G-2- 201, Access to Records.

GRAMA states that in response to a records request, a governmental entity is not required to create a record. GRAMA also states that format cannot hinder access. Information contained in a database is a record by definition, but that information is accessed by generating reports. Governmental entities program databases to generate reports to support the work and functions of government, which is not necessarily the same as the public might request. Is computer programming to create a report or to segregate restricted information in response to a GRAMA request “creating a record?” The requirements that in response to a request government is not required to create a record, and the requirement that format cannot hinder access seem in contradiction when applied to records in databases.

GRAMA states that governmental entities are not required to provide a record in a format not maintained by the governmental entity. When records exist only in proprietary software, this also seems to contradict the statement that format cannot hinder access.

GRAMA states that every person has a right to inspect a public record and take a copy during normal business hours. Databases make this concept difficult because government-maintained databases usually are not available for public perusal.

RECORD SHARING ISSUES:

Electronic formats have created additional challenges for sharing records within government. The provisions of Section 63G-2-206 govern how access should be handled when one governmental entity shares records with another. The originating entity is required to notify the recipient entity of the records classification and any access restrictions so that the recipient may abide by the same. Additionally, requesters are required to submit the request to the governmental entity that maintains the record.

These steps may work well for paper, but databases are shared across multiple agencies. In some cases, multiple agencies are using the same content management systems and have ready access to each other's records. Electronic records are easily copied. Because of these developments, requesters are confused about where to direct requests, and governmental entities sometimes are confused about who is responsible for providing access.