

Records Sharing as Addressed by GRAMA

Presentation by Paul Tonks, AAG counsel for
Division of Archives & Records Service



Records Management in Law Enforcement

9:00 a.m. – 10:00 a.m.: *Records Officers Supporting Law Enforcement Officers* by Lieutenant John Laursen

10:00 a.m. – 10:15 a.m. BREAK

10:15 a.m. – 11:15 a.m. Agencies' experience in using vendor databases for managing record information:

10:15 a.m. – 10:35 a.m. *Spillman* by Sherri Atwood and MaryAnn Bullock, Pleasant Grove Police

10:35 a.m. – 10:55 a.m. *Versadex* by Mia Jacobs, Salt Lake Police

10:55 a.m. – 11:15 a.m. *FATPOT* by Lt. Harley Watkins, Utah Highway Patrol

11:15 a.m. – 11:30 a.m. BREAK

11:30 a.m. – Noon. *Records Sharing as Addressed by the Government Records Access Management Act (GRAMA)* by Paul Tonks, Assistant Attorney General

Noon–1:00 p.m. LUNCH

1:00 p.m. – 2:00 p.m. **Discussion panel on body cameras** moderated by Rosemary Cundiff, Utah State Archives

Paul Burnett, Saratoga Springs Police

Captain Brett Haycock, Weber County Sheriff

Lieutenant Alex Blauer, Utah Transit Authority Police

Representative Daniel McCay, House of Representatives

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2:15 p.m. – 2:45 p.m. *Updated Law Enforcement General Retention Schedules* by Rebekkah Shaw, Utah State Archives

2:45 p.m. – 3:30 p.m. *Closing Keynote Address: Knowing Where the Bodies Are Buried* by Robert Kirby, a former police officer and author of *End of Watch: Utah's Murdered Police*

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11:30 a.m. – Noon. Records Sharing as Addressed by the Government Records Access Management Act (GRAMA) by Paul Tonks, Assistant Attorney General **(THIS IS ME, BETWEEN YOU AND LUNCH ☺)**

LUNCH IS HERE ☺

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Wednesday, February 27, 2008

On the prowl



Winter and spring seem to be my mountain lion season. This picture was taken on February 18th at 7:00PM. (The glare is reflection from water on the lens window.)





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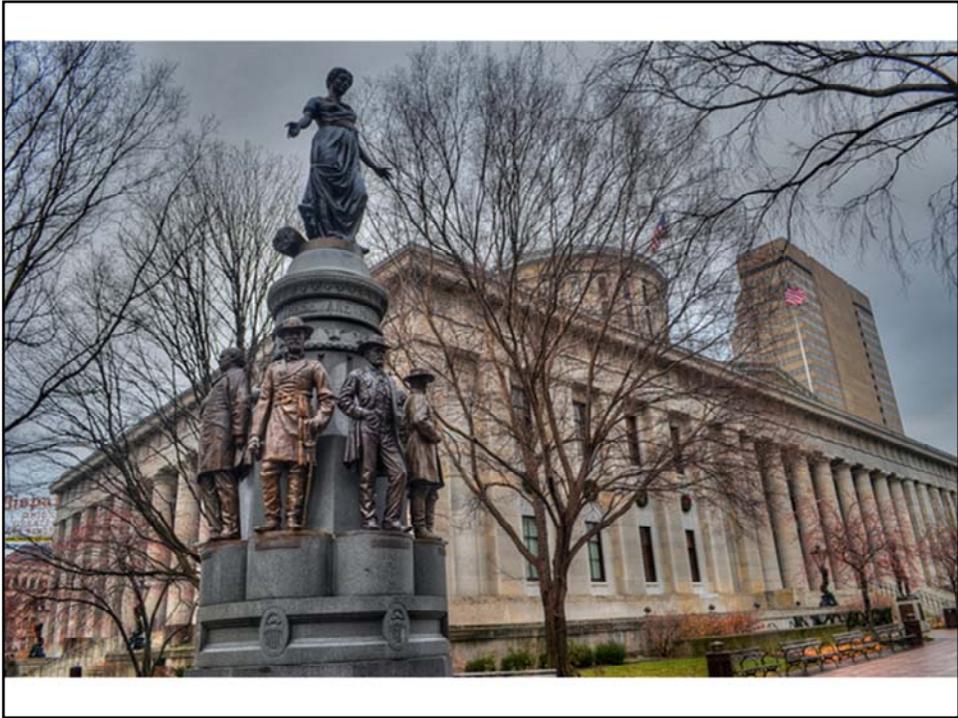
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Paul Tonks, Assistant Attorney General

- Assigned Counsel for Division of Archives and the State Records Committee since 2008
- Practicing law since 1996
- Staff Attorney for Ohio Courts of Appeals (10th and 12th Appellate Districts) 1996-2002
- Ohio Assistant Attorney General 2002-2004
- Associate Attorney Perez & Morris LLC
- Utah Assistant Attorney General 2008 to present
- Also currently represent Auditor's Office, Department of Administrative Services, Division of Finance, Division of Fleet Services, Division of Administrative Rules, and Utah Office of Victims of Crime.







GRAMA!!

That part of the Utah Code that no one
knows what it is...



GRAMA!!!

“I don’t think we are really supposed to know how this works.”



Good luck with it...

WHAT IS GRAMA?

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WHAT IS GRAMA?

Government
Records
Access
Management
Act

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Government
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Access
Act

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 and/or security issues outweigh the public's right to know.

WHAT IS GRAMA?

GRAMA governs how persons or entities get
Access to Governmental Records.





How Do I Get Access to Records through GRAMA?

1. Make a “GRAMA” request.

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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. Utah Code § 63G-2-201(1).

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Utah Code § 63G-2-204 governs how a person makes a “GRAMA request” for a record.

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Utah Code § 63G-2-204 governs how a person makes a “GRAMA request” for a record.

How are “records” characterized under GRAMA?

- 1. Public Records:** Everything that isn't private, controlled, protected, or restricted.
- 2. Private Records:** Generally records about individuals that contain private personal information such as government identification numbers, medical information, or other personal information. Utah Code Ann. § 63G-2-302.
- 3. Controlled Records:** Generally medical, psychiatric, or psychological records. Utah Code Ann. § 63G-2-304.
- 4. Protected Records:** A list of 65 different types of records the Utah Legislature has determined should be “protected” if properly classified by the governmental entity. Utah Code Ann. § 63G-2-305.
- 5. Restricted Records:** Records which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation. Utah Code Ann. § 63G-2-201(3)(b) & -201(6).

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But what about non-public records?

How Do I Get Access to Records through GRAMA?

1. Make a “GRAMA” request.
2. By Court Subpoena.

SUBPOENA

To (name)
of (address)
..... State:

- YOU ARE ORDERED TO: (select one box)
- Attend court to give evidence (see Part A of order)
 - Attend court to give evidence and produce documents (see Part B for details)
 - Produce documents to the Court (see Part C for details)

TAKE NOTICE: IF YOU FAIL TO OBEY THIS SUBPOENA, a warrant may issue for your arrest.



"Don't drop it, pal. It's a subpoena."



How Do I Get Access to Records through GRAMA?

1. Make a “GRAMA” request.
2. By Court Subpoena.

“Subpoenas and other methods of discovery under the state or federal statutes or rules of civil, criminal, administrative, or legislative procedures are not written requests under Section 63G-2-204.”
Utah Code § 63G-2-204.

How Do I Get Access to Records through GRAMA?

1. Make a “GRAMA” request.
2. By Court Subpoena.

“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...” Utah Code § 63G-2-202(7).

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“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...” Utah Code § 63G-2-202(7).

“...the court has considered and where appropriate, limited the requester’s use and further disclosure of the record.”

How Do I Get Access to Records through GRAMA?

1. Make a “GRAMA” request. § 63G-2-204
2. By Court Subpoena. § 63G-2-207

How Do I Get Access to Records through GRAMA?

1. Make a “GRAMA” request. § 63G-2-204
(public records mostly)
2. By Court Subpoena. § 63G-2-207
(complicated procedure which involves a judge’s signature)

How Do I Get Access to Records through GRAMA?

1. Make a “GRAMA” request. § 63G-2-204
2. By Court Subpoena. § 63G-2-207
3. By Sharing Records. § 63G-2-206



To Share?





...or Not to Share?



or Not to Share??

Utah Code Ann. § 63-2-801(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, provides a copy of, or improperly uses a private, controlled, or protected record, knowing that the disclosure is prohibited under [GRAMA], is guilty of a class B misdemeanor.”



Why should we share?

Utah Code Ann. § 63A-12-105(1):

“All records contained or maintained by a state governmental entity **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 and Title 63G, Chapter 2, Government Records Access and Management Act” (“GRAMA”).

Utah Code Ann. § 63A-12-105(2):

“[A]ll 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 part except as provided in this chapter and Title 63G, Chapter 2, Government Records Access and Management Act” (“GRAMA”).

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Exception to the rule: Records which constitute a “valuable intellectual property.” -105(2)(b).

Utah Code Ann. § 63G-2-604

1. Governmental entities are required to file a proposed schedule for the retention and disposition of each type of material that is defined as a record under GRAMA. Utah Code Ann. § 63G-2-604(1)(a).

2. The retention schedule is reviewed and approved of by the State Records Committee. Utah Code Ann. § 63G-2-604(1)(b).

The Office of the Attorney General shall provide counsel to the State Records Committee and shall review proposed retention schedules. Utah Code Ann. § 63G-2-502(7).

3. If the governmental entity has not received an approved retention schedule for a specific type of material that is classified as a record under GRAMA, the **model retention schedule** maintained by State Archives shall govern the retention and destruction of that type of material. Utah Code Ann. § 63G-2-604(1)(c).

4. The governmental entity **shall maintain and destroy records** in accordance with the retention schedule. Utah Code Ann. § 63G-2-604(1)(b).

Why should we share?

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In a sense, we are all a part of a big happy Utah family...





So if you are requesting a record from another Utah governmental entity, or you receive a request from another Utah governmental entity, you should use...

The “sharing records” provisions
in GRAMA.

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It just kind of makes sense.

Remember:

Utah Code § 63G-2-206 uses the phrase “a governmental entity may provide a record to another governmental entity...”

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But also remember, that under Utah Code § 63G-2-206(3), you “shall” provide a record to some governmental entities.

When in doubt, consult your attorney.

How do I share non-public records with another governmental entity?

1. The entity must have a legal interest in the records.

Has to be something more than “I would like to see your records.”

How do I share non-public records with another governmental entity?

Examples of “legal interest” in the records:

1. Serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction. -206(1)(a).

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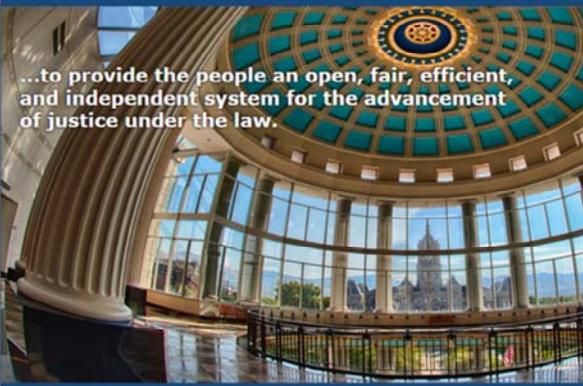


Office of the
Utah State Auditor

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4. Is one that collects information for presentence, probationary, or parole purposes. -206(1)(d).



...to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

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Salt Lake County District Attorney Sim Gill



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Our staff of 226 Deputy District Attorneys, Paralegals, Investigators, Legal Secretaries, and other support staff comprise the largest criminal prosecutorial agency in the State of Utah.

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3. Is authorized by state statute to conduct an audit and the record is needed for that purpose. -206(1)(c).
4. Is one that collects information for presentence, probationary, or parole purposes. -206(1)(d).
5. The Legislature, a legislative committee, a member of the Legislature, or a legislative staff member. -206(1)(e).

**What does the requesting
governmental entity need to do?**

- 1. Must provide “written assurance” that the record is necessary to the performance of the governmental entity’s duties and functions.**

**What does the requesting
governmental entity need to do?
Provide “written assurance” that:**

1. The record is necessary to the performance of the governmental entity’s duties and functions.
-206(2)(a)(i).
2. The record will be used for a purpose similar to the purpose for which the information in the record was collected or obtained.
-206(2)(a)(ii).

**What does the requesting
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Provide “written assurance” that:**

1. The record is necessary to the performance of the governmental entity’s duties and functions. -206(2)(a)(i).
2. The record will be used for a purpose similar to the purpose for which the information in the record was collected or obtained. -206(2)(a)(ii).
3. Use of the record produces a public benefit that is greater to or equal to the individual privacy right that protects the record. -206(2)(a)(iii).

**What does the governmental entity who
is the holder of the record need to do?**

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1. Inform the recipient of the record's classification and its accompanying restrictions on access. -206(4)(a).

What does the governmental entity who is the holder of the record need to do?

- 1. Inform the recipient of the record's classification and its accompanying restrictions on access. -206(4)(a).**
- 2. If the recipient is not a governmental entity to which GRAMA applies, a written agreement that it will abide by those restrictions on access unless authorized by another statute or regulation. -206(4)(b).**

Exceptions, exceptions, exceptions...

- 1. Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor. -206(9).**
- 2. Notwithstanding any other provision in -206, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, then that rule, order, statute, or federal regulation controls. -206(7).**

The Grand Take away is...?

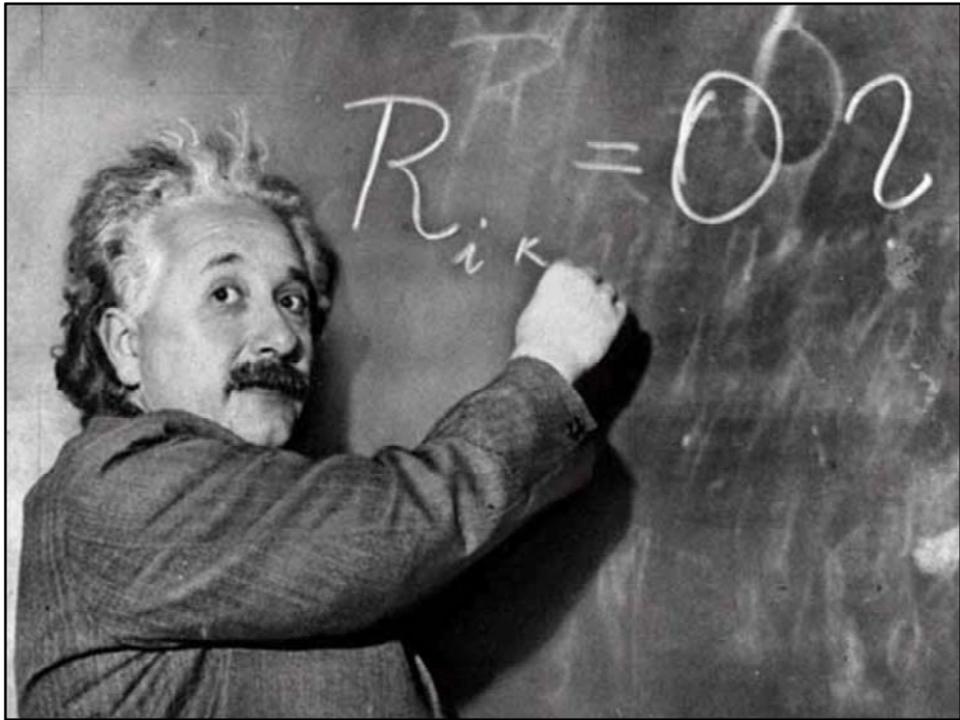
- Requests for records between governmental entities should be under the “sharing records” provisions and not under standard “GRAMA” requests.

The Grand Take away is...?

- Requests for records between governmental entities should be under the “sharing records” provisions and not under standard “GRAMA” requests.
- When governmental entities receive “shared records,” they are under the same records classification obligations as the originating entity.

The Grand Take away is...?

- Requests for records between governmental entities should be under the “sharing records” provisions and not under standard “GRAMA” requests.
- When governmental entities receive “shared records,” they are under the same records classification obligations as the originating entity.
- Since there are exceptions to the rules and they can be complicated, always consult your legal counsel before sharing any non-public records.



How Do I Get Access to Records through GRAMA?

1. Make a “GRAMA” request. § 63G-2-204
2. By Court Subpoena. § 63G-2-207
3. By Sharing Records. § 63G-2-206
4. Public Records Portal (coming soon)

Questions??

