

# 2016 Legislative Updates to GRAMA

Presentation by Paul Tonks, AAG counsel for  
Division of Archives



# Fun! Fun! Fun! Let's Talk About GRAMA ALL DAY!!

Presentation by Paul Tonks, at least for this moment,  
is counsel for the Division of Archives...



# 2016 Legislative Updates.

- Whee...
- Yay...
- Why is this before lunch...
- And they have a lawyer doing this...



# Legislative Updates!!

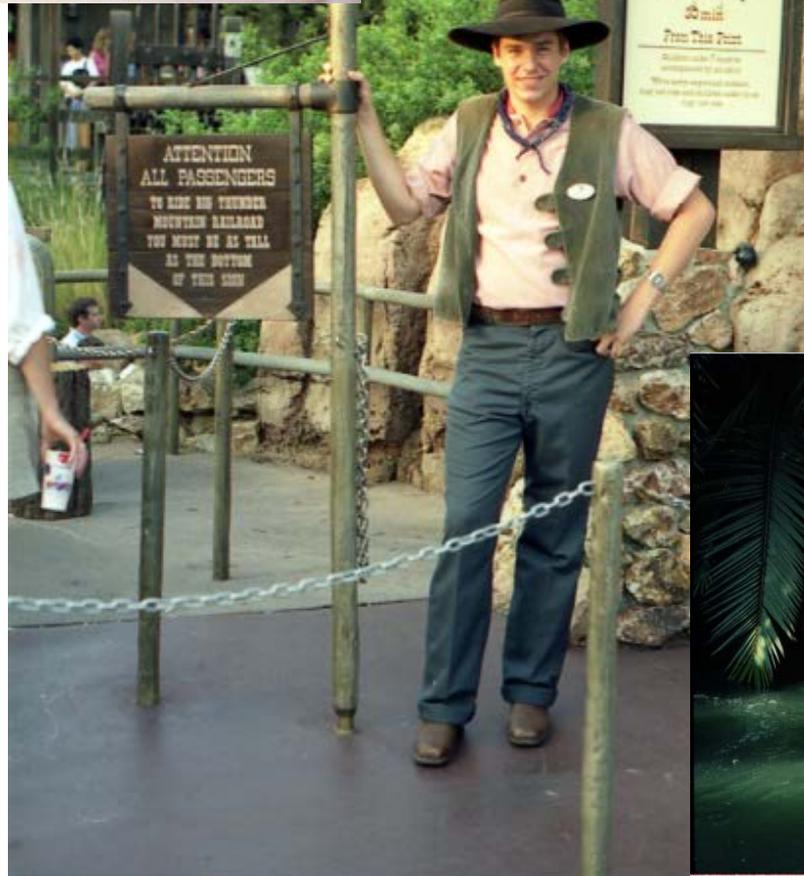
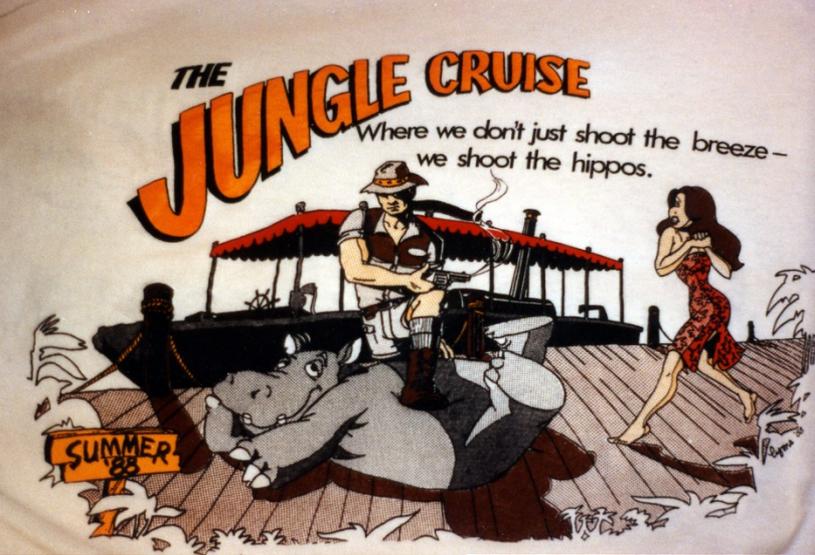
Presentation by Paul Tonks

AAG Counsel for Division of Archives



# **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 (10<sup>th</sup> and 12<sup>th</sup> 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, and the Office of Administrative Rules.**



**A DAY WITH GRAMA!!**

**Utah State Archives' Annual Spring  
Conference**

**...held on April 1<sup>st</sup>.**



---

*He's a pitcher, part yogi and part recluse. Impressively liberated from our opulent life-style, Sidd's deciding about yoga—and his future in baseball*

---

by **GEORGE PLIMPTON**



---

# THE CURIOUS CASE OF SIDD FINCH

---

PHOTOGRAPHS BY LANE STEWART

**NEW YORK METS  
FREE AGENT PLAYER REPORT**

OFF #

First Report   
Supplemental

Date of Last Report

Player: **FINCH HAYDEN**

Nickname: **SIDD**

Home Address: **GENERAL DELIVERY OLD GARDNER BEACH ME**

School Address

Position: **PITCHER** Bat: **—** Throws: **R** Hgt: **6'4"** Wgt: **170** DOB: **1956?**

Team Name: **NONE** City: State: **ME**

Date Eligible: Regular  Secondary  Grad Date:

Total Games Seen to Date: **0** Total Innings Pitched: **0** DATE LAST GAME SEEN:

RATING KEY	POSITION PLAYS	PITCHING		NON-PHYSICAL QUALITIES (1-10)	
		Fast	Control	Aggressiveness	Other
8 - Outstanding	Strong Ability	Fast Ball Vel	8 9?	Aggressiveness	<b>DON'T KNOW</b>
7 - Very Good	None	Fast Ball Motion	8 9?	Other	
6 - About Average	Plays All Positions	Curve Ball	7	Self-Confidence	
5 - Average	Running Base	Slider	8	Mental Toughness	
4 - Below Average	Base Running	Change-Up	7	Pressure Plays	
3 - Weak	Arm Strength	Other	7	Control	
2 - Poor	Arm Accuracy	Overall Control	8 9?	Intuition	
	Fielding	Command	7	Consistency	
	Throwing	Pace	7	Work Habits	
	B.B. Percent	B.B. Percent	2 3	Off-Field Habits	

PHYSICAL DESCRIPTION & INJURIES:  Gashed  Contused  Mangled  Yes  No

**GAWKY STRING-BEAN-TYPE - NO VISIBLE INJURIES**

STRENGTHS: **UNBELIEVABLE(!) FAST BALL AND CONTROL**

**YOU GOT TO SEE THIS.**

WEAKNESSES: **NEVER PLAYED (NO JOKE)**

OVERALL SUMMATION: **COULD BE THE PHENOM OF ALL-TIME. CALL ME**

**VERY HARD TO FIGURE**

SIGNABILITY DATA: Asking for \$ **0?** Actual Worth \$ **?** Agent Involved  Yes  No

PROSPECT CATEGORY: Excellent  Good  Average  Fringe  Crg  N.P.  START AT WHAT LEVEL: **MAJORS**

SCOUT'S NAME: **L. J. ...** Date: **JULY 28, 1984**



# “The Curious Case of Sidd Finch”

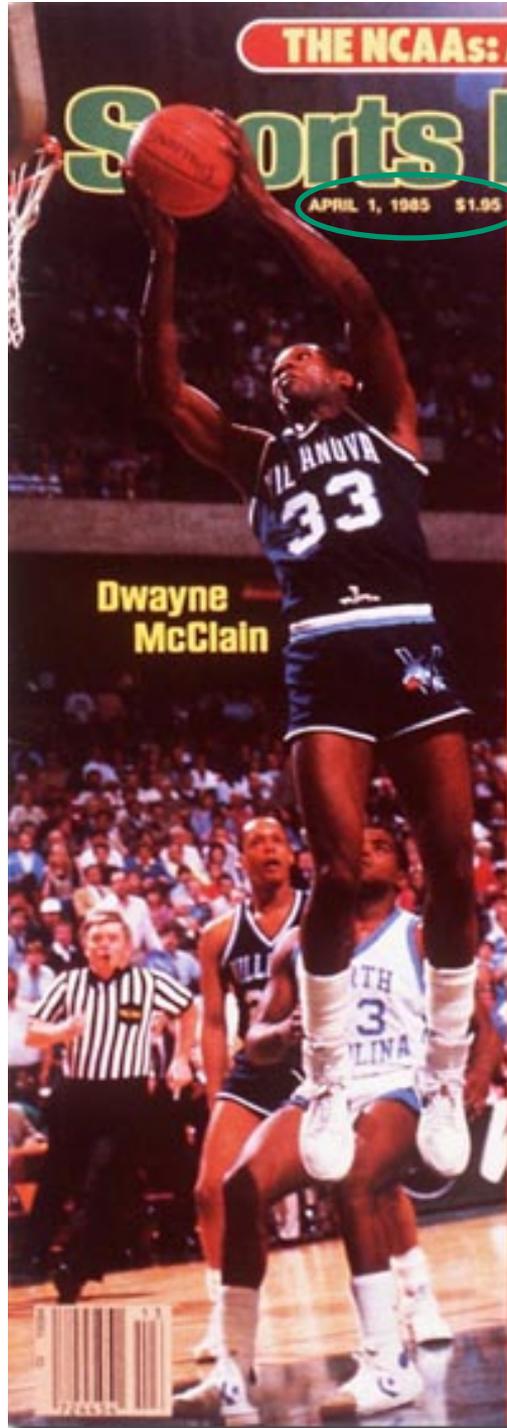
- Hayden Siddhartha “Sidd” Finch
- Only wore one shoe while pitching (a hiking boot)
- Studied with Tibetan monks, where he learned “yogic mastery of mind-body.”
- Trying to decide between playing baseball or playing the French Horn
- Throws 163 mph.
- (fastest recorded pitch is 103 mph)



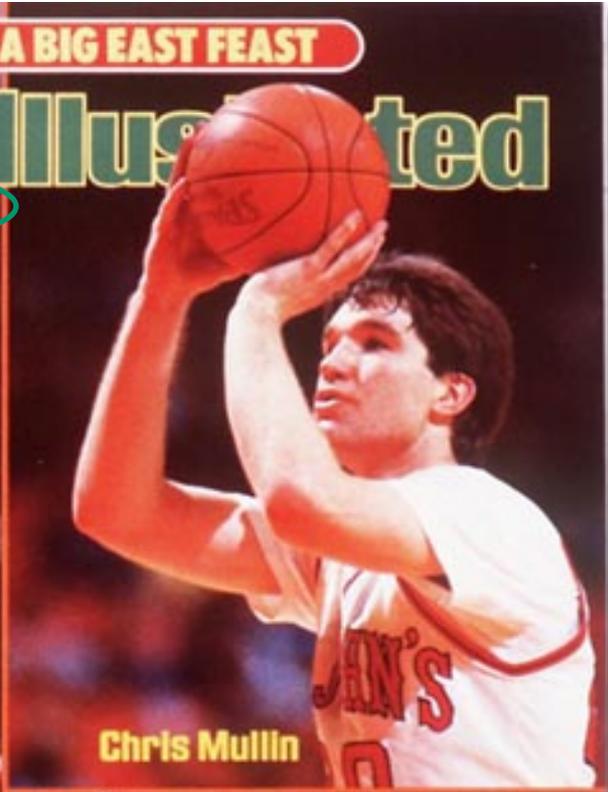
THE NCAA's: A BIG EAST FEAST

# Sports Illustrated

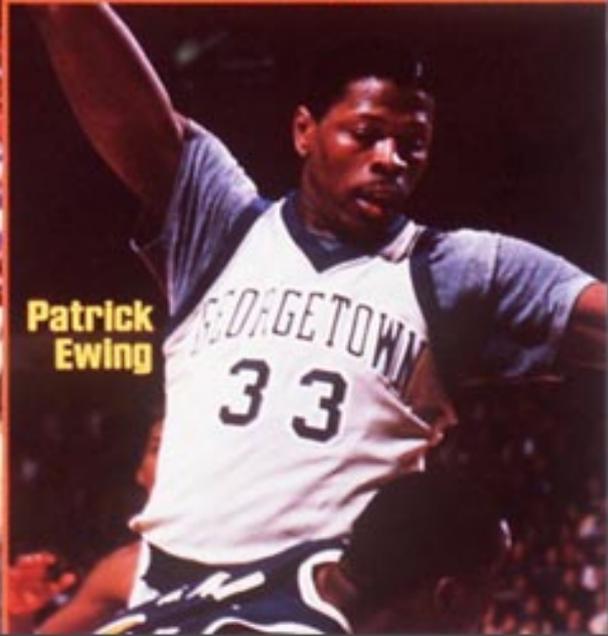
APRIL 1, 1985 \$1.95



**Dwayne McClain**



**Chris Mullin**



**Patrick Ewing**



*He's a pitcher, part yogi and part recluse.  
Impressively liberated from our  
opulent life-style, Sidd's deciding about yoga—  
and his future in baseball*

by **GEORGE PLIMPTON**



---

# THE CURIOUS CASE OF SIDD FINCH

---

PHOTOGRAPHS BY LANE STEWART

*He's a pitcher, part yogi and part recluse.  
Impressively liberated from our  
opulent life-style, Sidd's deciding about yoga—  
and his future in baseball*

by **GEORGE PLIMPTON**

He's a pitcher, part yogi  
And part recluse. Impressively liberated  
From our opulent life-style  
Deciding about yoga—  
And his future in baseball



---

# THE CURIOUS CASE OF SIDD FINCH

---

PHOTOGRAPHS BY LANE STEWART

*He's a pitcher, part yogi and part recluse.  
Impressively liberated from our  
opulent life-style, Sidd's deciding about yoga—  
and his future in baseball*

by **GEORGE PLIMPTON**

**H**e's **A** **P**itcher, **P**art **Y**ogi  
**A**nd **P**art **R**ecluse. **I**mpressively **L**iberated  
**F**rom **O**ur **O**pulent **L**ife-style  
**D**eciding **A**bout **Y**oga-  
**A**nd his **F**uture **I**n **B**aseball



---

---

**THE  
CURIOUS  
CASE OF  
SIDD FINCH**

---

---

PHOTOGRAPHS BY LANE STEWART

*He's a pitcher, part yogi and part recluse. Impressively liberated from our opulent life-style, Sidd's deciding about yoga—and his future in baseball*

by **GEORGE PLIMPTON**

H A P P Y  
A P R I L  
F O L L  
D A Y  
A F I B

---

# THE CURIOUS CASE OF SIDD FINCH

---

PHOTOGRAPHS BY LANE STEWART

*He's a pitcher, part yogi and part recluse.  
Impressively liberated from our  
opulent life-style, Sidd's deciding about yoga—  
and his future in baseball*

by **GEORGE PLIMPTON**

# HAPPY APRIL FOOL DAY A FIB

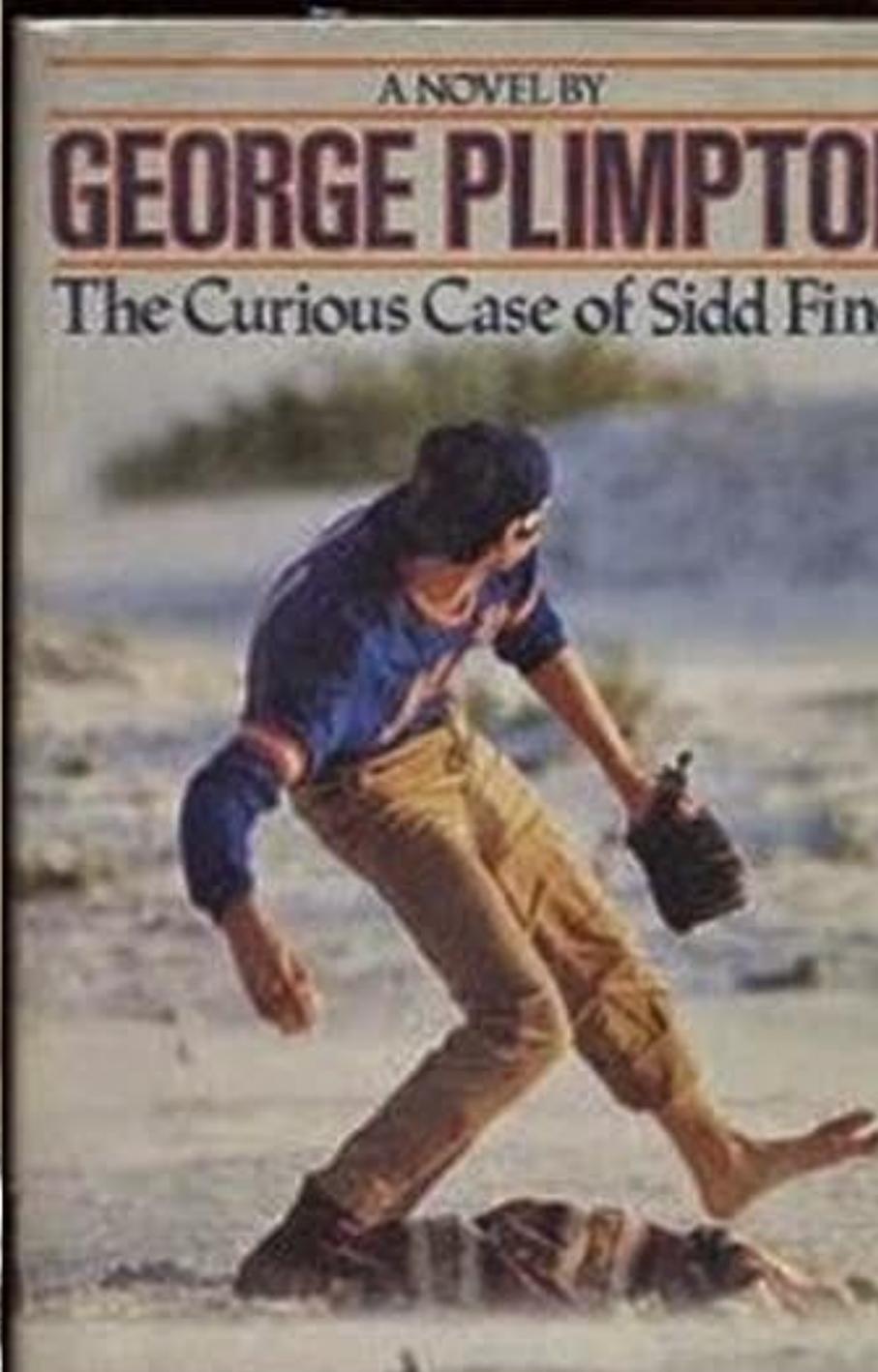


---

# THE CURIOUS CASE OF SIDD FINCH

---

PHOTOGRAPHS BY LANE STEWART



# Happy April Fool's Day!

**...the Legislature didn't do much updating with GRAMA during the 2016 Legislative Session.**

**...sort of.**

# GRAMA: Third Rail in Utah Politics



# GRAMMA: Third Rail in Utah Politics

Deseret News Search

Utah U.S. & World Sports Moneywise Opinion Faith Family

Only \$85 per day  
when you buy a 3-day ticket for \$255.  
One Park per day, ages 10+

Advertise with us

## Utah lawmakers repeal controversial open records law

By Dennis Romboy and Marjorie Cortez, Deseret News Print Font [+] [-] 53 Comments »

[Follow @dennisromboy](#)

Published: Friday, March 25 2011 12:00 p.m. MDT

[Share](#) 3 [Share](#) 3 [Tweet](#) 0 [Pin it](#) 0 [g+](#) 0 [in](#) [+1](#) [Print](#)



[View 27 photos »](#)

Sen. Curtis S. Bramble speaks during debate over HB477. Utah legislators meet Friday, March 25, 2011, in special session at the state Capitol about HB477.

Scott G. Winterton, Scott G. Winterton, Deseret News

### Summary

Utah lawmakers repealed a widely criticized law restricting access to many government records Friday, though not without a tussle between the House and Senate.

SALT LAKE CITY — Utah lawmakers repealed a widely criticized law restricting access to many government records Friday, though not without a tussle between the House and Senate.

The vote, however, doesn't mean changes to the

# **GRAMA: Third Rail in Utah Politics**

**If you restrict access to public records, will be opposed by:**

- News Media**
- Freedom of Information Advocates**

# **GRAMA: Third Rail in Utah Politics**

**If you restrict access to public records, will be opposed by:**

- **News Media**
- **Freedom of Information Advocates**

**If you make access easier, may be opposed by:**

- **Governmental entities (cost of access)**

# GRAMA



**Public's Right to Access  
to information concerning  
conduct of the public's business.**

**Right to Privacy for  
personal data gathered  
by governmental entities.**

# Three Changes to GRAMA in 2016

**1. Body Cameras**

**2. FERPA**

**3. Fees**

# 1. Body Cameras

H.B. 300 Body-worn Cameras for Law Enforcement Officers

Bill Text

Status

Hearings/Debate

Enrolled

H.B. 300

Printer Friendly

1

## BODY-WORN CAMERAS FOR LAW ENFORCEMENT

2

### OFFICERS

3

2016 GENERAL SESSION

4

STATE OF UTAH

5

Chief Sponsor: Daniel McCay

6

Senate Sponsor: Daniel W. Thatcher

7

#### 8 LONG TITLE

##### 9 General Description:

10 This bill modifies the Utah Code of Criminal Procedure to address the use of  
11 body-worn cameras by law enforcement officers.

##### 12 Highlighted Provisions:

13 This bill provides:

- 14 \* that a law enforcement agency that uses body-worn cameras worn by law  
15 enforcement officers shall have a written policy governing the use of body-worn  
16 cameras that meets or exceeds the minimum guidelines provided;
- 17 \* minimum guidelines for the activation or use of body-worn cameras; and
- 18 \* the prohibited uses of body-worn cameras by law enforcement officers.

##### 19 Money Appropriated in this Bill:

Bill Sponsor:



Rep. McCay, Daniel

Floor Sponsor:



Sen. Thatcher, Daniel W.

Substitute Sponsor: Rep. McCay, Daniel

Drafting Attorney: Susan Creager Allred

Fiscal Analyst: Brian Wikle

#### Bill Tracking

Track this

Email Notification

[Tracking Page](#)

#### Bill Text

- [Introduced](#)
- [Enrolled](#) (Currently Displayed)

#### Other Versions

- [H.B. 300](#)

#### Related Documents

- [Fiscal Note](#)
- [HB0300 comparison](#)
- [Agency Perf Note](#)

# 1. Body Cameras

Utah Code 63G-2-302(2): The following records are **private** if properly classified by a governmental entity:

1. Private vs. Protected Record
2. Under -302(2) not -302(1) which says “the following records are private.”

# 1. Body Cameras

Utah Code 63G-2-302(2): The following records are **private** if properly classified by a governmental entity:

(g) Audio and video recordings created by a body-worn camera...that record sound or images **inside a home or residence** except...

# 1. Body Cameras

(g) Audio and video recordings created by a body-worn camera...that record sound or images **inside a home or residence** except...

1. Depict the commission of an alleged crime;
2. Record any encounter with a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;
3. Record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;
4. Contain an officer involved criminal incident; or
5. Have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

# 1. Body Cameras

(g) Audio and video recordings created by a body-worn camera...that record sound or images **inside a home or residence** except...

...in other words, we want to protect the privacy of the inside of a person's home.

2015 Bills that didn't quite make it  
to becoming a law (but were  
rumored to have become a law)

HB 386: Body Cameras  
for Law Enforcement  
Officers



# H.B. 386 Body Cameras for Law Enforcement Officers

  
Bill Text

  
Status

  
Streaming

## Introduced

1 **BODY CAMERAS FOR LAW ENFORCEMENT OFFICERS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Daniel McCay**

5 Senate Sponsor: \_\_\_\_\_

6

---

---

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah Code of Criminal Procedure and the Government Records  
10 Access and Management Act to address the use of body cameras by law enforcement  
11 officers.

12 **Highlighted Provisions:**

13 This bill provides:

- 14 ▶ that a recording made by a body-worn camera by a law enforcement officer
- 15 constitutes a private record, as specified;
- 16 ▶ that a law enforcement agency that uses body-worn cameras by law enforcement
- 17 officers shall have a written policy governing the use of body-worn cameras that
- 18 meets or exceeds the minimum guidelines provided;
- 19 ▶ minimum guidelines for activation and use of body-worn cameras;
- 20 ▶ for prohibited uses of body-worn cameras by law enforcement officers;
- 21 ▶ the minimum level of retention for recordings made by body-worn cameras;
- 22 ▶ minimum guidelines for the use, disclosure, and access to recordings made by
- 23 body-worn cameras;
- 24 ▶ guidelines for the technological requirements of any agency retention system that is

**Bill Sponsor:**



Rep. McCay, Daniel

**Floor Sponsor:**

**Drafting Attorney:** Susan Creager Allred

**Fiscal Analyst:** Brian Wikle

**Bill Text**

- ◊ [Introduced](#)  (Currently Displayed)

**Related Documents**

- ◊ [Fiscal Note](#) 

**Information**

- ◊ **Last Action:** 12 Mar 2015, House/ filed
- ◊ **Last Location:** House file for bills not passed

**Bill Tracking**

- ◊  Track this Bill
- ◊ [Tracking Page](#)

**Similar Bills**

- ◊ [Technology](#)
- ◊ [Peace Officer](#)

113 collected by a public transit district, including contact and payment information and customer  
114 travel data;  
115 (r) an email address provided by a military or overseas voter under Section  
116 20A-16-501;  
117 (s) a completed military-overseas ballot that is electronically transmitted under Title  
118 20A, Chapter 16, Uniform Military and Overseas Voters Act;  
119 (t) records received by or generated by or for the Political Subdivisions Ethics Review  
120 Commission established in Section 11-49-201, except for:

---

121 (i) the commission's summary data report that is required in Section 11-49-202; and  
122 (ii) any other document that is classified as public in accordance with Title 11, Chapter  
123 49, Political Subdivisions Ethics Review Commission; ~~and~~  
124 (u) a record described in Subsection 53A-11a-203(3) that verifies that a parent was  
125 notified of an incident or threat[-]; and  
126 (v) any record described in Title 77, Chapter 7a, Law Enforcement Use of Body-Worn  
127 Cameras, that:

128 (i) (A) occurs in a situation that constitutes a reasonable expectation of privacy; and  
129 (B) does not constitute a recording of interest; or  
130 (ii) contains images:  
131 (A) that can be used to identify an individual; and  
132 (B) that is not relevant to a recording of evidence or a recording of interest as defined  
133 in Section 77-7a-102.

134 (2) The following records are private if properly classified by a governmental entity:  
135 (a) records concerning a current or former employee of, or applicant for employment  
136 with a governmental entity, including performance evaluations and personal status information  
137 such as race, religion, or disabilities, but not including records that are public under Subsection  
138 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

139 (b) records describing an individual's finances, except that the following are public:

140 (i) records described in Subsection 63G-2-301(2);

141 (ii) information provided to the governmental entity for the purpose of complying with  
142 a financial assurance requirement; or

143 (iii) records that must be disclosed in accordance with another statute;

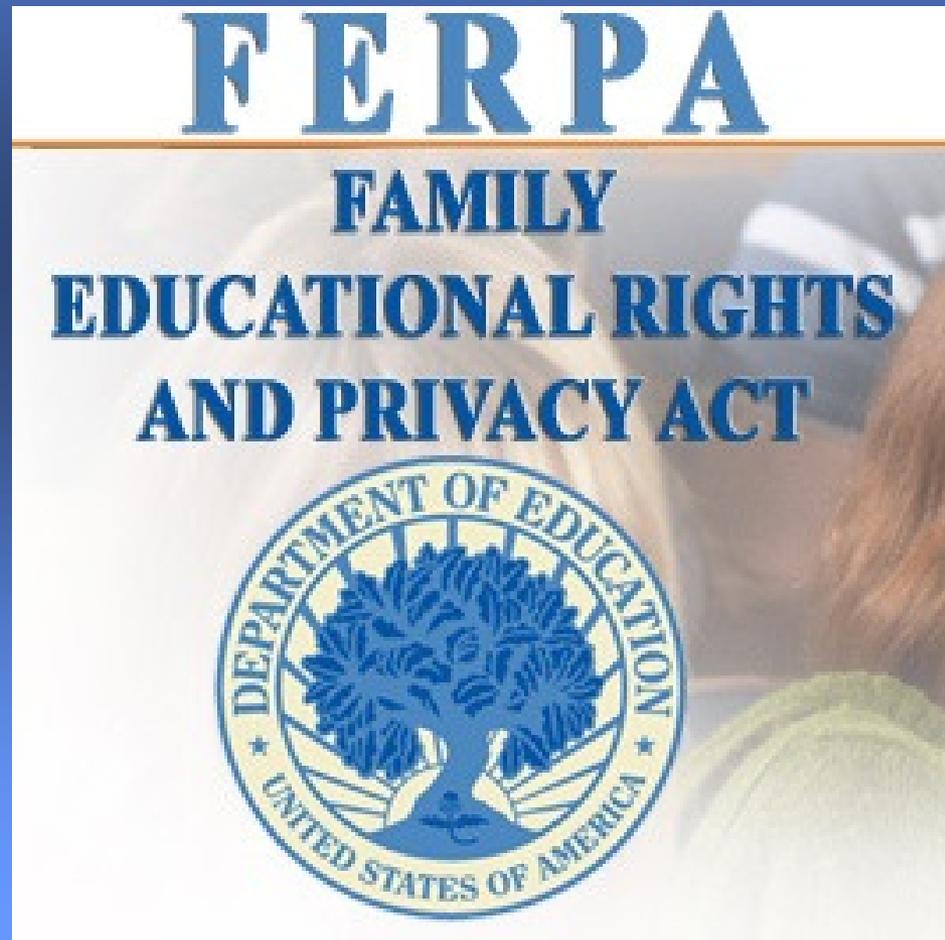
144 (c) records of independent state agencies if the disclosure of those records would

## 2. FERPA

What is FERPA?

## 2. FERPA

What is FERPA?



## 2. FERPA

What is FERPA?

It is not...



a “Ferbie.”

## 2. FERPA

63G-2-107. Disclosure of records subject to federal law.

Notwithstanding the provisions of Subsections 63G-2-201(6)(a) and (b), **this chapter does not apply** to a record containing **protected health information** as defined in 45 C.F.R., Part 164, Standards for Privacy of Individually Identifiable Health Information, if the record is:

- (1) controlled or maintained by a governmental entity;  
and
- (2) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information.

- Commonly known as “HIPPA.”



# 2. FERPA

Bill Text

Status

Hearings/Debate

Enrolled

H.B. 288

Printer Friendly

1

## EDUCATIONAL RECORDS PROTECTION AMENDMENTS

2

2016 GENERAL SESSION

3

STATE OF UTAH

4

**Chief Sponsor: Craig Hall**

5

Senate Sponsor: Todd Weiler

6

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to the disclosure of education records.

10 **Highlighted Provisions:**

11 This bill:

12 \* amends provisions related to the disclosure of education records as defined under  
13 federal law; and

14 \* makes technical and conforming changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 **AMENDS:**

21 **63G-2-107**, as renumbered and amended by Laws of Utah 2008, Chapter 382

22

23 *Be it enacted by the Legislature of the state of Utah:*

24 Section 1. Section **63G-2-107** is amended to read:

25 **63G-2-107. Disclosure of records subject to federal law.**

**Bill Sponsor:**



Rep. Hall, Craig

**Floor Sponsor:**



Sen. Weiler, Todd

**Substitute Sponsor:** Sen. Bramble, Curtis S.

**Drafting Attorney:** Rebekah M. Bradway

**Fiscal Analyst:** Brian Wikle

**Bill Tracking**

Track this

Email Notification

[Tracking Page](#)

**Bill Text**

- [Introduced](#)
- [Enrolled](#) (Currently Displayed)

**Other Versions**

- [H.B. 288](#)
- [Sub 1 \(Not Adopted\)](#)
- [Sub 2 \(Not Adopted\)](#)

**Related Documents**

- [Fiscal Note](#)
- [HB0288 comparison](#)
- [Agency Perf Note](#)

**Information**

## 2. FERPA

63G-2-107. Disclosure of records subject to federal law.

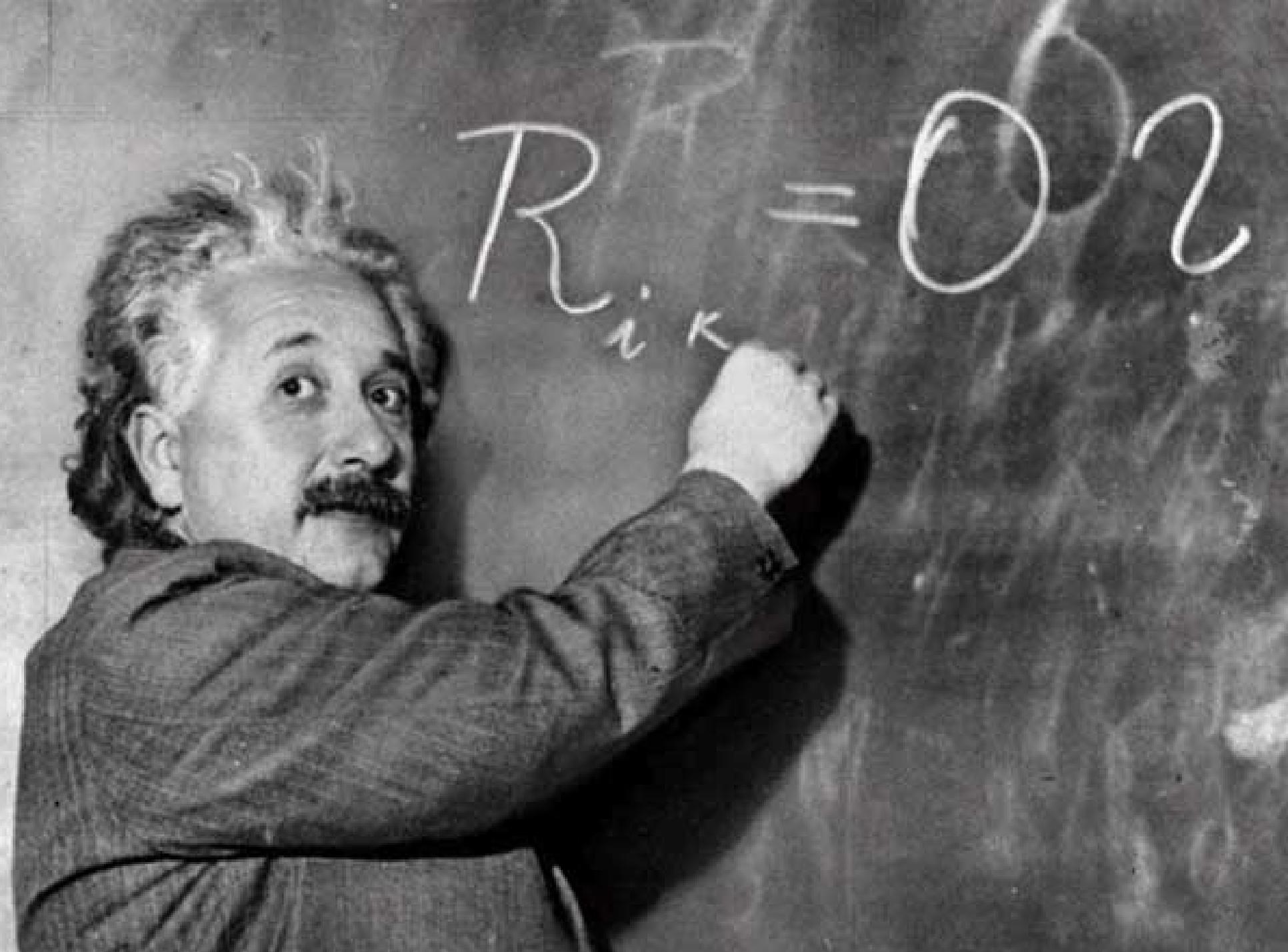
(1) Notwithstanding Subsection 63G-2-201(6), this chapter does not apply to a record containing protected health information as defined in 45 C.F.R., Part 164, Standards for Privacy of Individually Identifiable Health Information, if the record is:

- (a) controlled or maintained by a governmental entity; and
- (b) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information.

(2) The disclosure of an education record as defined in the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99, that is controlled or maintained by a governmental entity shall be governed by the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

## 2. FERPA

Takeaway: Disclosure of education records as defined by FERPA will be governed by FERPA.



$$R_{ik} = 0$$

### 3. Fees



## **63G-2-203: Fees**

**General Proposition: A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of providing a record.” -203(1)**

## 63G-2-203: Fees

**General Proposition: “A governmental entity may charge a **reasonable** fee to cover the governmental entity’s actual cost of providing a record.” -203(1)**

## **63G-2-203: Fees**

**Generally, when compiling a record in a form other than that normally maintained by the governmental entity, actual costs may include...**

- 1. The cost of staff time compiling, formatting, manipulating, packaging, summarizing, or tailoring the record into an organization or media to meet the person's request.**
- 2. The cost of staff time for search, retrieval, and other direct administrative costs for complying with a request.**

**- 203(2)(a)**

## 63G-2-203: Fees

**Remember!** May not charge a fee for:

1. Reviewing a record to determine whether it is subject to disclosure;  
or
2. Inspecting a record.

- 203(5)

# 63G-2-203: Fees

## Remember!

1. Cannot charge for first 15 minutes of staff time; and
2. Time that can be charged for staff providing the record “may not exceed the salary of the lowest paid employee who...has the necessary skill and training to perform the request.” -203(2)(b) & (c)

## 63G-2-203: Fees

Can you provide a record for free???



“THERE’S NO SUCH THING  
AS A FREE LUNCH.”

~ MILTON FRIEDMAN ~

## 63G-2-203: Fees

**Sure!!!**

**“A governmental entity may fulfill a record request without charge...”**

**- 203(4)**

# 63G-2-203: Fees

**Sure!!!**

**“A governmental entity **may** fulfill a record request without charge and is encouraged to do so when it determines that...”**

- 1. Releasing the record primarily benefits the public rather than a person;**
- 2. The individual requesting the record is the subject of the record (or can legally request for the person); or**
- 3. The requester’s legal rights are directly implicated by the information in the record, and the requester is impecunious.**

# Legalese 101

**“May” does not mean the same thing as “Shall.”**



## **63G-2-203: Fees**

**“A person who believes that there has been an unreasonable denial of a fee waiver...may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under 63G-2-205.”**

**- 203(6)**

# State Records Committee



# Utah District Court



# Standard of Review for Appeal

 H.B. 63 Fees for Government Records Requests

  
Bill Text

  
Status

  
Hearings/Debate

Enrolled

H.B. 63

[Printer Friendly](#)

1

## FEEES FOR GOVERNMENT RECORDS REQUESTS

2

2016 GENERAL SESSION

3

STATE OF UTAH

4

**Chief Sponsor: Brian S. King**

5

Senate Sponsor: Curtis S. Bramble

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions of the Government Records Access and Management Act

10

**Bill Sponsor:**



Rep. King, Brian S.

**Floor Sponsor:**



Sen. Bramble, Curtis S.

**Drafting Attorney:** Robert H. Rees

**Fiscal Analyst:** Brian Wikle

**Bill Tracking**

[Track this](#)

[Email Notification](#)

[Tracking Page](#)

**Bill Text**

- [Introduced](#) 
- [Amended](#) 

[Amended Pages Only](#)

## 63G-2-203: Fees

“A governmental entity **may** fulfill a record request without charge and is encouraged to do so ~~when~~ **if** it determines that...”

- Seriously? Not much change.

## 63G-2-203: Fees

(b) The adjudicative body hearing the appeal:

(i) shall review the fee waiver de novo, but shall review and consider the governmental entity's denial of the fee waiver and any determination under Subsection (4); and

(ii) has the same authority when a fee waiver or reduction is denied as it has when the inspection of a public record is denied.

## 63G-2-203: Fees

“Shall review the fee waiver *de novo*, but shall review and consider the governmental entity’s denial of the fee waiver and any determination under Subsection (4)...”

## 63G-2-203: Fees

“Shall review the fee waiver *de novo*, but shall review and consider the governmental entity’s denial of the fee waiver and any determination under Subsection (4)...”

**“De Novo”** Latin for “from the beginning,” “afresh,” “anew,” “beginning again.”

# Appeals to District Court from the State Records Committee

“The court shall make its decision  
*de novo*...”

- 404(6)(a)

# Things to Keep in Mind

- HB 63 has not become effective yet.
- HB 63 has not been presented to the Records Committee yet.
- “Utah Code § 63G-2-203(4) ‘encourages’ a governmental entity to fulfill a records request without charge under certain circumstances, but GRAMA still gives a governmental entity the discretion to deny a fee waiver request **as long as the denial can be considered reasonable.**” Utah State Records Committee.

# Does HB 63 really make a difference?



# What do I really need to know??

(...and why didn't he provide a handout?)

- **Save the trees**
- **Lazy**
- **Had a cold yesterday (and hopefully still have a voice at this point of the presentation)**
- **Too busy doing things for Office of Administrative Rules**
- **Not a lot of changes really...**

# What do I really need to know??

1. Audio and video recordings inside a residence are generally “private” records.
2. Educational records for non-higher education institutions are governed by “FERPA” and are not considered “records” under GRAMA.
3. Fee waiver appeals to the State Records Committee are reviewed *de novo*.

# Questions??



The Department of Administrative Services

Division of  
**Archives &  
Records Service**

SERVICES ELEVATED