

SALT LAKE COUNTY
COUNTYWIDE POLICY
ON
**GRAMA GUIDELINES REGARDING PUBLIC AND NON-PUBLIC RECORDS AND
PERSONAL PRIVACY**

Reference --

Government Records Access and Management Act (GRAMA), Utah Code Annotated, Sections [63G-2-103](#) & [63G-2-202](#)

Records Management, Salt Lake County Ordinance #1190, Subsections 2.82.030, 2.82.050 & 2.82.060

Security of Personal Identifiers, Salt Lake County Ordinance #1598, Subsections 2.81.020 and 2.81.030

Purpose --

It is the purpose of Salt Lake County to give due consideration and deference to the rights of appropriate access to government documents and the rights of privacy of individuals who are the subjects of government records.

The following guidelines are provided to aid in considerations involving both rights, within the statutory scheme provided by county ordinances and the state legislature in UCA 63G-2-101 et. seq.

1.0 General Considerations

- 1.1 GRAMA establishes the general rule that governmental records shall be considered open and public unless some specific provision or interest requires the record to be non-public.
- 1.2 GRAMA, case law, and the Records Management ordinance generally direct the county to deny access to government records where access would constitute a clearly unwarranted invasion of personal privacy.
- 1.3 All classification and designation of records in the county shall be done with due respect for the personal privacy rights of the subjects of those records.
- 1.4 While county officials and employees enjoy personal privacy rights regarding some government records, as do all citizens, those privacy rights should not be invoked to shield from public view records regarding the performance or activities of officials and employees as to government operations.
- 1.5 Where the public or non-public nature of a specific record or record series is set out by the Act, by some other federal law or state statute, those determinations or guidelines shall control.

- 1.6 Agencies shall collect or maintain individual personal identifiers only as provided by law or ordinance, or where necessary to conduct business as defined by the Security of Personal Identifiers ordinance.

2.0 Disclosure of Records

- 2.1 The Act and the ordinance permits disclosure of records which have been classified as non-public under circumstances in which the public interest in disclosure of the record outweighs any personal privacy rights in the subject of the record is greater than or equal to the interest favoring restriction of access. However, certain records containing private information or which are classified as controlled or protected may not be disclosed even under this balancing test.
- 2.2 The decision to release such information should be made at the level of department director or elected official except where a division director has been specifically designated to make such decisions in regards to division records.
- 2.3 The advice of the District Attorney's Office shall be sought prior to disclosure.
- 2.4 Records received from non-county agencies shall retain the classification assigned by those agencies. If the request seeks such records and which are classified other than "public" the county agency shall not provide those records and shall refer the requestor to that originating agency.

3.0 Notification of Subject of Record

- 3.1 The ordinance permits, but does not require, county employees to notify the subject of a record when a request for that person's record has been made.
- 3.2 Notification of the subject is not mandatory and shall not be grounds for denying a records request nor for delaying the response to a request beyond the time limits set out in GRAMA and Countywide Records Policy and Procedure 2030, Access to Records.
- 3.3 GRAMA requires county agencies that collect Private or Controlled information to post a notice and include with all forms the reasons the person is asked to provide the information, the intended uses of the information, and the consequences to the person if they refuse to provide the information.
- 3.4 Notification of the subject is a courtesy and failure to notify shall not create any rights on behalf of or through such subject for any equitable or monetary relief.

4.0 Personal Privacy and Private Records

The following factors should be considered in defining personal privacy rights for purposes of classification, designation, disclosure, notifying a record subject when a request has been made, segregation of public data from non-public data in a record, and for the public disclosure of non-public records when the public interest in disclosure outweighs or equals personal privacy rights.

- 4.1 Before reviewing the below considerations, county employees should determine first, if the material is a record as defined under [UCA 63G-2-103 \(22\)](#), and second, whether the record's

public or non-public status has already been established by the Act, the ordinance, some other state or federal law, a previous classification or designation, or by court order. Agencies may not rely on a previous classification alone but must assess the status of the records sought upon receipt of a proper request. Agencies are not required to create a record to fulfill a request but may do so and may assess reasonable charges to cover the costs of creating the record or providing it in a format other than as maintained by the agency.

4.2 Determination is made on a case-by-case basis, is subjective and can be complex, based on a number of circumstances. In cases where the direction is not clear, the advice of the county Records Manager or District Attorney should be sought.

4.2.1 Requests for the release of “private” records shall be handled as follows:

- A. Records classified as private under state statutes [UCA 63G-2-302 \(1\)](#) or other relevant statutes or regulations shall remain private and shall be released only as allowed under [UCA 63G-2-202 \(1\)](#). No balancing of interests will be undertaken.
- B. Records that may be classified as “private” under [UCA 63G-2-302 \(2\)](#) or which are otherwise classified as “private” must be reviewed to determine if the reasons for disclosure are greater than or equal to the reasons for not releasing the record.

4.2.2 Agencies possessing non-public records relating to a current and on-going criminal, civil, or administrative investigation being conducted by another agency should contact the investigating agency or the District Attorney's Office when a request for such records is received and shall receive and act upon the advice given by the agency or the attorney's office regarding the records request. Records of closed investigations and which may reveal investigative techniques or disclose the identity of witnesses must be referred to the District Attorney for review before they may be released.

4.3 A written record shall be made of the privacy rights analysis reflecting any legal advice sought or received.

4.4 Specific considerations regarding the determination of whether personal privacy rights outweigh public disclosure include the following:

4.4.1 Whether the record discloses the intimate details of a person's life. "Intimate details" may include but not be limited to such matters as family circumstances, financial condition, social security number, home address and phone, health and mental health matters, religious affiliation, and similar subjects of a sensitive and private nature;

4.4.2 Whether disclosure of the record would cause unreasonable harm, embarrassment, or humiliation to a particular person whose identity is given or who is readily identifiable or would constitute a risk to the health and safety of an individual;

4.4.3 Whether public interest in disclosure of the record outweighs or is equal to the personal privacy considerations; and

- 4.4.4 Whether the subject of the record has a legitimate expectation of privacy in that particular record (but a specific promise or contractual guarantee of privacy is not enough by itself to overcome laws regarding public access).
- 4.5 The following considerations will generally weigh in favor of disclosure:
 - 4.5.1 If the information has already been made public;
 - 4.5.2 If there is a strong public interest in disclosure;
 - 4.5.3 If the information regards widely-known or public figures, who will have a lesser expectation of privacy; and
 - 4.5.4 If the record requested specifically regards government workings, activities, procedures and, especially, public expenditures; however, the law makes a number of specific exceptions regarding such matters, as listed in Policy 2090.
 - 4.5.5 If the expectation of privacy in the record is not clearly established.
- 4.6 An individual's home address, private email address, home telephone number, or personal mobile phone number is considered Protected if the information is required to comply with a law, ordinance, rule or order and the subject of the record has a reasonable expectation of privacy.
- 4.7 Government officials and employees.
 - 4.7.1 Most information in records about public officials and employees regarding their public status, duties, compensation, and other information regarding government duties and matters should be treated as public as defined by GRAMA in [UCA 63G-2-301\(2\)\(b\)](#).
 - 4.7.2 Public officials and employees have the same right of privacy as private individuals regarding information, in governmental records, which has nothing to do with their government jobs or activities.
 - 4.7.3 Under GRAMA, individuals identified as "at-risk government employees" may designate specific records or parts of records as Private by filing a written application with the appropriate county agencies.
- 4.8 Security of Personal Identifiers
 - 4.8.1 The Security of Personal Identifiers ordinance requires that county agencies shall collect or maintain personal identifiers such as individual home address, home telephone number, personal cellular telephone number, signature, social security number, birth date, personal email address, driver's license number, passport number, employee identification number, and any financial identification numbers only where provided by law or ordinance, or where necessary for the function of the agency. The agency shall document in writing why personal identifiers are collected and have in place a written procedure for the secure collection, maintenance, transmission, transfer, or disposal of personal identifiers.

- 4.8.2 When a county agency contracts with a private entity that transmits or uses individuals' personal identifiers, the contract shall ensure the protection of those personal identifiers and the contractor will be legally liable for any breach of that duty.

5.0 Controlled Records

A record containing medical, psychiatric, or psychological data about an individual which the agency reasonably believes releasing the record to the subject of the record would be detrimental to the subject's mental health or safety of another, or releasing the information would constitute a violation of normal professional practice and medical ethics, shall not be released, except as provided in [UCA 63G-2-304 \(2\)](#).

6.0 Protected Records

- 6.1 Records classified as protected under [UCA 63G-2-305](#) shall retain that classification and are not subject to the balancing test.
- 6.2 Records classified as protected but not under [UCA 63G-2-305](#) shall be subject to the balancing test upon receipt of a proper records request and shall be released if the interests favoring release outweigh or are equal to the reasons for retaining the protected status.
- 6.3 Access to protected records shall be controlled by [UCA 63G-2-202](#).

APPROVED and PASSED this 10 day of June, 2014.

SALT LAKE COUNTY COUNCIL

Michael Jensen, Chair

SALT LAKE COUNTY CLERK

Sherrie Swensen

APPROVED AS TO FORM:

District Attorney Date